

STATE OF NEW YORK

REPORT AND RECOMMENDATIONS

OF THE

Joint Legislative Committee to Investigate
the Affairs of the City of New York

ON THE

BOARD OF EDUCATION

February 15, 1922



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REPORT

February 15, 1922.

To the Legislature:

The administration of the public schools of the City is and for years has been weak and inefficient, and does not measure up to the reasonable requirements of the school children of the City, or the expectations and desires of the people of the City, or of the State which is charged with ultimate responsibility for maintaining efficient and adequate common schools in every part of the State.

The deficiencies are apparent.

A. INADEQUATE SCHOOL ACCOMMODATIONS.

In December, 1917, the month before the present Board of Education took office, there were 746,114 children registered in the day elementary schools, of whom 34,153 were on part time and 76,214 on the so-called duplicate form of organization. In the last month for which figures are now available there were 817,210 children on register in the day elementary schools, of whom 81,242 were on part time and 194,234 on double session.

In the day high schools there were 58,063 registered in December, 1917, none of whom were on double session and only 1,796 were on part time. In October, 1921, the register had increased to 82,265 and there were 1,516 children on double session and 33,892 on part time.

These figures show insufficient school accommodations to care for the growth of school population.

The capacity of new elementary school buildings and additions opened during the past four years is as follows:

Year	No. of New Buildings or Additions Opened	No. of Sittings Therein.
1918	2	1,294
1919	4	1,380
1920	None	None
1921 to Dec. 6	16 *	19,203
Total	22	21,877

* Of the 16 opened in 1921, all but two were opened after September 1st.

During the preceding four years, 44 new elementary buildings or additions were opened, with 52,847 sittings, a better, but still inadequate showing.

This unfortunate condition is only partly due to lack of appropriations. Exasperating delays and a shifting policy are equally responsible. The total corporate stock authorizations from January 1, 1910, to June 30, 1921, for school buildings amounted to \$68,744,732.11, while the expenditures during the same period amounted to only \$46,092,839.88. Fifteen million of this authorization was made in 1921, but the ten million authorization of earlier years was revoked on December 30, 1918, without the expenditure of any part of it in the meantime, and was subsequently appropriated for the same purposes for which it was originally designed. This resulted in holding up the building program at the time of its greatest need. A detailed statement of the authorizations and cash expenditure from 1910 to 1921 will be found on page 38 of the appendix.

It will be noted that the expenditures of the three and a half years, 1918 to July, 1921, were but \$15,224,331.97, which, in view of the depreciated value of the dollar, represents not more than \$8,000,000 in building value on the basis of 1910 to 1917, or about one-half of the previous four-year totals.

The average annual authorization for the eleven and a half years covered in the annexed table was \$5,977,802.79 and the average annual expenditure \$4,008,073.03.

The inadequacy of school buildings has inevitably resulted in

- (1) *Inadequate instruction, keeping scholars on part time.*
- (2) *Overcrowding of the school buildings with resulting danger to sanitation and health.*

B. FIRE HAZARDS.

In August, 1921, there were 7,353 violations of fire prevention rules recorded against 496 of the City's 695 school buildings. The estimated cost of removing these violations is about \$4,500,000. Some of the violations are serious, as, for example, stairways that are not enclosed with fire and smoke-proof parti-

tions and not provided with self-closing doors; interior fire alarm systems that do not work; wooden and not self-closing fireproof doors along the line of exit stairways; no hand fire extinguishers; and storage of dangerously inflammable materials in non-fireproof rooms or compartments. The Superintendent of School Buildings wrote the Board of Education, March 23, 1921, as follows:

“ This with the continued growth of the schools and consequent overcrowding and congestion causes me great uneasiness and distress of mind. If the fire prevention work was and is required for schools under normal conditions, how much more important must it be when a building contains quite one-half or more in excess of the normal . . . why paint and renovate the interior of a building when there are essential items of fire prevention work to be performed which would actually operate to safeguard life and lessen fire risk ? ”

The total authorizations and expenditures for fire prevention work since September 16, 1904, is as follows:

Date of Authorization	Amount of Authorization	Expenditures	Balance
Sept. 16, 1904.....	\$300,000 00	\$300,000 00	.....
	550,000 00	550,000 00	.....
April 3, 1908.....	1,000,000 00	1,000,000 00	.....
June 3, 1910.....	450,000 00	450,000 00	.....
July 17, 1911.....	450,000 00	447,666 59	\$2,333 41
Nov. 19, 1915.....	250,000 00	250,000 00	.....
July 7, 1916.....	250,000 00	250,000 00	.....
April 20, 1917.....	250,000 00	240,660 85	9,339 15
April 22, 1921.....	250,000 00	.....	250,000 00

C. NEGLIGENT ADMINISTRATION.

Other deficiencies of administration appear from the failure to repair the education building, and the condition of by-laws and minutes of the Board of Education. In February, 1918, the seventh, eighth and ninth floors of the Hall of the Board of Education, at 500 Park Avenue, housing the executive offices of the Board, were burned out. Bids for the rebuilding of these floors were not opened until December 7, 1921, nearly four years after the fire. During this interval the work of the Board has been seriously interfered with because of compulsory vacancy of the three top floors of its building. The Bureau of School Buildings had to be moved to inadequate quarters in the Municipal Building, several miles away from the other offices of the Board. The

delay in agreeing on new plans, in securing an appropriation and in letting the contract is open to serious criticism. No business corporation would tolerate such methods. See testimony of President of Board of Education, vol. 3, p. 1321.

The law of 1917 so changed the organization of the school system that a complete revision of the by-laws was necessary in order to make them conform with the new statute. This revision has not been made. A few sections were revised but the bulk of the by-laws was still in the form of a large octavo volume published in 1914 with hundreds of amendment slips pasted in, many of which antedate the law of 1917.

The minutes of Board meetings are records of great importance to teachers, board members, board officers and city authorities, as they have the force of law within the scope of the powers delegated to the Board of Education by the Legislature. The last volume of minutes to be furnished with a printed index is that for 1915. The minutes of board meetings are not ordinarily available until two months after the meeting.

Such conditions could not exist with a capable Board. They have failed not only in matters wholly in their control, but they show no capacity to secure effective administration through the co-operation of other governmental agencies on which they depend, or to secure the enactment of better laws by inspiring public confidence and arousing public opinion. They have shown little or no capacity for leadership for many years in the discharge of the important trust confided to them.

Unsound Legislation.

Responsibility for such conditions may not be easily apportioned. It doubtless rests primarily on the system of making purely political appointments to the Board of Education. Such appointments are made without any check of non-partisan approval or confirmation. Each incoming mayor seeks, and usually gains, a large degree of political control over the Board of Education. The members of the present Board were all appointed by the present Mayor under the amendment of 1917. Such political appointments are in strict accord with the ancient plan of delegating educational functions to localities, but the State has largely outgrown and changed the system by increasing State power over local administration, while furnishing State aid to meet new requirements imposed by law. The old system is not

adapted in principle to a municipality like New York. State jurisdiction over schools is exercised by the University of the State, which is non-partisan in its organization and spirit. Some plan should be devised for the creation of an equally non-partisan and representative body in the City.

Apart from this basic fault, it is desirable to review some specific faults of organization, which should be removed to give assurance that a competent board could successfully discharge its duty.

1. COMPLICATED AND ANTIQUATED PROVISIONS OF LAW REQUIRING THE CO-OPERATION OF MANY OTHER BRANCHES OF THE CITY GOVERNMENT IN BUILDING OPERATIONS WITH RESULTING DELAYS, OFTEN AMOUNTING TO A VETO OF A BUILDING PROJECT.

The first and most important of these objectionable provisions is the provision of law making the Board of Education dependent upon the action of the Board of Estimate and the Sinking Fund Commission for appropriations and acquisitions of sites for school houses. There is a general concurrence in the necessity of making the Board of Education independent in this respect. It may therefore be assumed that there is but one opinion upon the subject, and that the necessity is great. The Committee inquired with particularity as to the steps required to be taken to build a school house, and found that there were at least twenty-seven, each one involving considerable delay and the whole practice likely to discourage those who were engaged in the undertaking. Most of them are unnecessary for the protection of the City's interest, and hinder the prompt building of school houses. An exhibit showing these steps in detail will be found on page 36 of the appendix.

In two instances it was found that twenty years or more had elapsed from the time the recommendation for a new building was made by a local school board and the time when the building was opened for use. P. S. No. 54, Brooklyn, for example, was recommended by the school board of Brooklyn in 1901; the contract date for its completion is September, 1922.

Examination of the record of some twenty schools on the current building program shows that plans and specifications were before the Board of Estimate in one instance for 356 days, an-

other for 211 days, and in eight cases for more than 50 days. This did not take into account the time between the return by the Board of Estimate and a resubmission by the Board of Education. In one case the same matter was four times before the Board of Estimate. In four other cases the same matter was before the Board of Estimate three times.

2. STATUTORY POWERS PROPERLY BELONGING TO THE BOARD OF EDUCATION NOW VESTED IN BODIES OR OFFICIALS NOMINALLY SUBORDINATE TO THE BOARD BUT IN FACT SUPERIOR IN RESPECT OF SUCH POWERS.

The superintendent of schools, the Board of Superintendents, and the Bureau of Compulsory Education, all have a fixed tenure of office, and although chosen by the Board, possess important powers of administration which are exercised independently of and often in opposition to the desires of the Board itself.

It is unnecessary to enumerate these important powers which are readily referred to in the statute, and have been frequently the cause of conflict between the boards and officials named and the Board of Education. Many of these powers are among the most important exercised in the administration of the schools.

3. FREQUENT CHANGES AND CONFLICT OF LAWS GOVERNING THE ADMINISTRATION OF SCHOOLS.

The Board of Education originally consisted of nineteen members. It was changed in 1901 to forty-six members, and in 1917 to seven members. The charter was radically revised in 1897 and in 1901, and its provisions extensively modified by amendments to the State Education Law in 1917, each change involving important changes in the plan of administration of the schools and their relation to other city agencies and the State. A comparative statement of the principal changes effected by the statute of 1917 in the law of 1901 will be found on page 22 of the appendix.

Under the act of 1917 conflicts have arisen by reason of the uncertainty of the law between the Board of Education and the Commissioner of Education at Albany, between the Board of Education and the municipal authorities relative to their respective powers, and between the Board of Education and the superin-

tendent of schools, if not between the Board of Education and the Board of Superintendents and associate superintendents.

There has been a failure to concentrate in clear and unmistakable language the full responsibility for the administration of the public school system on the Board of Education, the municipal authorities, or the State. Groping for a remedy they have found none because the fundamental error of appointing a political Board of Education has remained.

Finances.

Fortunately the financial statement for education in the City is not complicated. The expenditures since 1910 have been as follows:

<i>Year</i>	<i>Expenditures.</i>
1910	\$28,456,945 68
1911	28,958,179 29
1912	33,791,974 40
1913	35,481,641 12
1914	38,185,495 90
1915	39,797,960 64
1916	39,708,764 22
1917	41,101,074 41
1918	43,884,893 59
1919	45,490,121 68
1920	66,194,668 04
1921 (first 6 mos.)	44,828,326 69
1922 (budget).....	*88,798,546 81

* Including \$18,097,534.51 from the State.

The normal increase for the years 1920, 1921 and 1922 has been augmented by the Lockwood-Donohue act in the sum of \$30,000,000. This has been devoted to the pay of teachers. The annual normal increase may be roughly taken as \$2,000,000.

The apportionment of State moneys to the City since 1914 has been as follows:

<i>Year</i>	<i>Amount Apportioned to the City</i>
1914	\$1,923,025 00
1915	2,115,679 73
1916	2,220,730 03
1917	2,414,837 16
1918	2,321,191 13
1919	2,700,657 19
1920	5,025,570 17
1921	16,938,023 85
1922	*18,097,534 51

* Estimated.

The increase of apportionment for 1922 over 1919, the period during which the mandatory increase due to legislation has occurred, has been about \$15,000,000, or one-half of the amount of the increased charge due to these laws.

The City complains of the increase effected by law. As education is a State function, although commonly delegated to municipalities, it would appear that when the State interferes to increase the cost of education in so considerable an amount, it should provide ways and means for defraying such additional expenses without embarrassment to the municipalities. The State's taxing power is unlimited, and it is a matter of comparative indifference to any part of the State whether the funds for education are raised by State or local tax.

The constitution limits the debt incurring power of cities to ten per cent of the assessed value of real estate, and the taxing power to two per cent of the assessed value of real and personal property. These limitations which are proper and useful, were enacted with reference to the normal expense for education. Such increase in cost is the result of a change of policy in the entire State as to the standard of teaching, which it is expected will be much improved by making the teachers' profession more attractive. It is true that this augmented cost was favored by substantially all the members of the legislature from the City, and the present administration of the City claims to have favored it; but it was done by State authority, and the Committee finds no evidence tending to show that the additional expense would in fact have been incurred in the absence of legislative enactment. It doubtless seems strange to one unfamiliar with the real financial situation of the City and such an

increased charge should be a source of embarrassment. The City has a debt incurring capacity of more than a billion dollars, a taxing capacity of more than two hundred million dollars, and an unencumbered income of more than sixty millions. But by reason of the course of past and present administrations, the City has been for some years past near its debt limit, if it has not exceeded it, and grave question exists as to its having exceeded its tax limit in the last two annual assessments.

In preparing the budget for 1921, the City under claim of necessity, omitted \$27,000,000 from the school appropriation, and met it afterwards by special revenue bonds, and other devices, throwing most of the charge over on to the year 1922. The Comptroller advised striking ten million dollars from the 1922 budget for education on the ground that otherwise the tax imposed would exceed the constitutional limit. It is unadvisable at present to increase charges upon the City and it would seem to be desirable for the State to establish a plan of appropriations increasing annually until it is sufficient to meet the additional charge for education it has created since 1920.

While this report is confined to matters relating to the City of New York, there is a like situation in other parts of the State, and the problem of providing for the cost of education under these laws will require solution in other important municipalities. It is therefore a State as well as a City issue.

The legislature has from time to time fixed a mandatory tax for school purposes in the City. It fixed the tax at four mills in 1898, three mills in 1903, and 4.9 mills in 1917. These charges were made in the exercise of State authority to insure the maintenance of schools, but they may be regarded as representing a minimum below which the cost of education may not be reduced rather than as an attempt to increase the expenditure. For the most part the City has made considerable and in many instances large appropriations for schools in excess of the mandatory tax.

NON-POLITICAL BOARD OF EDUCATION.

The problem of securing a Board of Education for the City which shall stand for education free from political considerations, is the fundamental one. As the University of the State is the State-wide instrument of control in education the members of the University of the State resident in the City, now four in number, can with the Mayor who should be chairman of the

Commission, be drafted into service as a Commission to appoint members of the City Board of Education. This will give local recognition by requiring all members of the Commission to reside in the city. By taking over as members of the Commission residents of the city who are members of the Board of Regents it will insure the performance of the State's obligation and duty in education, now greatly increased by the added burden of cost which the State assumes. But more important than all else, it will take politics out of schools.

RECOMMENDATIONS

1. The Committee recommends that the Board of Education of the City of New York consist of members appointed by the Commission as provided in this report.

2. That the Board of Education be granted complete independence from all municipal control in the acquisition of real property for school purposes, by purchase, condemnation, lease or otherwise, within the limit of the funds available therefor.

3. That the Board of Education be granted complete independence from all municipal control in the construction, alteration and repair of school buildings, provided that its superintendent of school buildings, before starting work, certify in writing that the plans and specifications comply with the building and electrical codes and the laws of the State; and provided further that occupancy shall not be permitted until the superintendent of school buildings shall have certified that the building as completed complies with the building and electrical codes and the laws of the State, but without disturbing the City's jurisdiction as to fire prevention.

4. That the Board of Education be granted complete independence from all municipal control in the administration and expenditure of all school moneys, subject only to audit by the Comptroller of the City for the purpose of preventing fraud or error.

5. That the City be required to appropriate in its annual budget amount which together with the school moneys which are apportioned to the City by the State, will equal the budget appropriation for schools in the City for the year 1922 (\$88,798,546.81) plus an annual increase of two million dollars as representing the normal increase of cost; that the present authorization

for building school houses be not revoked and that at least \$6,000,000 be authorized annually for this purpose.

6. That the State provide for a graduated increased appropriation for schools until the amount apportioned for the City of New York shall be increased fifteen million dollars over the amount apportioned in 1922.

7. That sections of the greater New York Charter inconsistent with the provisions of the education law be repealed.

And the Committee further recommends that as soon as the Board of Education is reconstituted under the foregoing recommendations that the powers of the Board be increased as follows:

8. That the Board of Education be constituted the fiscal and policy determining head of the school system with power to delegate authority to the Superintendent of Schools, as it may deem wise.

9. That the Board of Education be granted power to establish, abolish or consolidate such boards, bureaus and divisions as it may deem necessary excepting only the Board of Examiners.

10. That the Superintendent of Schools and all other officers and employees derive their power and authority from the by-laws of the Board of Education, subject only to the provisions of the Education Law.

Respectfully submitted,

SCHUYLER M. MEYER, *Chairman.*

THEODORE DOUGLAS ROBINSON.

FREDERICK W. KAVANAUGH.

MAXWELL S. HARRIS.

SIMON L. ADLER.

SOL ULLMAN.

JOHN R. YALE.

WALTER W. WESTALL.

ELON R. BROWN, *Counsel.*

I subscribe to the Committee's recommendations except that I do not believe that the power of appointment of members of the Board of Education should be exercised by officials elected or appointed outside of the City of New York. Irrespective of their residence, the Regents are elected by the Legislature. I favor confirmation of appointments by the Mayor to the Board of Education by either the Board of Aldermen or by the Board of Finance suggested in the Committee's first report.

THEODORE STITT.

APPENDIX

EDUCATION UNDER THE GREATER NEW YORK CHARTER.

The union into one municipality under the corporate name of the City of New York of "the various communities lying in and about New York harbor, including the City and County of New York, the City of Brooklyn and the County of Kings, the County of Richmond and part of the County of Queens," effected by Chapter 378 of the Laws of 1897, brought together into one fabric the various different threads of educational policy which had been spun by the separate statutory provisions enacted by the State Legislature for the benefit of the several communities.

These had been and were of the most diverse character, and the recognition in the new charter of many of these local peculiarities, in response doubtless to strong local pressure to perpetuate a time-honored custom or to assure a continuance in office to some local officer, made the educational sections of the new instrument complex and not simple affairs.

At the time of consolidation, for example, the old City of New York had a Board of Education of 21 members appointed by the Mayor. The City of Brooklyn had a Board of Education of 45 members appointed by the Mayor. In what became the Boroughs of Queens and Richmond, there were many independent school organizations based on town or school district lines.

The new charter sought to recognize local sentiment. It continued the Board of Education of the former City of New York as the School Board for the Boroughs of Manhattan and The Bronx. It continued the Board of Education of the former City of Brooklyn as the School Board for the Borough of Brooklyn, and it substituted in each of the new Boroughs of Queens and Richmond, a Borough School Board of 9 members for the various pre-existing local school organizations. This arrangement gave each borough a School Board with very considerable powers over the schools of the borough. In addition, provision was made for a Board of Education of 19 members, consisting of the 4 Chairmen of the 4 Borough School Boards, 10 delegates elected from

its membership by the School Board of Manhattan and The Bronx, and 5 delegates chosen similarly by the School Board of Brooklyn. This Board of Education was constituted a separate corporation and was made the head of the Department of Education, set up as one of the administrative departments of the City.

The new Board did not enjoy the same degree of independence as its predecessors. On the administrative side, many powers previously possessed by the Boards of Education were given to the Borough School Boards. On the financial side, there had been a gradual growing away from the original idea, whereby local school authorities were independent of municipal authorities. The Act of 1851, for example, had given the Board of Education corporate powers and had invested it with full control of the common schools with power to take and hold property, secure proper accountability in the expenditure of school moneys and administer the funds derived from the city and State. No municipal control was incidental thereto, for the supervisors of the city and county were required to raise, for educational purposes, certain sums easily ascertainable under the law, and "such additional sum or sums as the Board of Education * * * shall have reported to be necessary." This gave the Board of Education a position of peculiar independence in relation to the fiscal authorities of the City of New York, but during the next 46 years, this independence was steadily and increasingly impaired.

The Board of Education of 1898 had very little financial power. It was made the head of a department of the city government, and by section 1059, the City was given the power to determine the amount of money to be allowed from the tax levy for the support of the schools. About the only financial functions remaining to the Board were the allotment of funds to the boroughs on the basis of school population and the number of teachers employed, and the control of the special school fund.

The educational chapter of the charter of 1897 represents an attempt, similar to attempts made before and since, to reconcile two hopelessly conflicting theories. The schools cannot be both independent and subject to municipal control, and yet the Legislature has repeatedly enacted laws by which it has endeavored to make this paradox work. The school authorities have fought to preserve every right they ever enjoyed and the city authorities have sought, with equal vigor, to supervise and control the expendi-

ture of city funds appropriated by them for school purposes. A clear, consistent and uncompromising enactment by the Legislature, settling the many points of controversy, would go far to improve school conditions in New York City.

The charter of 1897 was soon radically revised. Its successor was Chapter 466 of the Laws of 1901, and the educational chapter of that instrument was until 1917 the basis for the administration of the City's public schools.

The Department of Education was continued as one of the administrative departments of the City, and the Board of Education was placed at its head. The former Borough School Boards were abolished and the size of the Board of Education increased, to provide for borough representation. The new Board consisted of 46 members, appointed by the Mayor for five year terms, as follows:

- 22 residents of Manhattan.
- 4 residents of The Bronx.
- 14 residents of Brooklyn.
- 4 residents of Queens.
- 2 residents of Richmond.

The Board was given corporate privileges. Among other significant provisions of the new law were the following:

The Board of Education was to succeed to all the powers of the former Board of Education and Borough School Boards.

The Board of Education was to administer all moneys available for educational purposes.

The Board of Education had the power to lease property and make contracts.

The Board of Education had the power to appoint certain officers and clerks and to fix their salaries, and to appoint and fix the salaries above certain minimums of members of the teaching and supervising force.

There was to be a Board of Superintendents, consisting of the City Superintendent and 8 Associate Superintendents. the latter to consist of the 4 Borough Superintendents and of 4 persons selected from the Associate Borough Superintendents, each to hold office until the expiration of the term for which he had originally been appointed.

There were to be 26 District Superintendents, including all the Associate Borough Superintendents not appointed to the Board of Superintendents.

There were to be 46 local school boards, each consisting of a member of the Board of Education assigned by the President of the Board, the District Superintendent of the district and 5 persons appointed by the Borough President.

There was to be a Board of Examiners, to examine candidates for teachers' licenses.

The City was required to supply the Board of Education with funds for school purposes annually, amounting to not less than 4 mills on the dollar of assessed valuation.

The Department of Finance was given authority to audit the Board's accounts.

The provisions of this law respecting the organization of the school system remained substantially the same during the entire life of the educational section of the charter, but the powers of the Board of Education were increasingly impaired. Special salary laws were passed by the Legislature, which in effect deprived the Board of practically all control over teachers' salaries. By Chapter 43 of the Laws of 1903, the amount which the City must annually make available for school purposes was reduced from 4 mills to 3 mills contemporaneously with an increase in the assessed valuation of such magnitude that the yield of the 3-mill tax was greater than the yield of the 4-mill tax. Both amounts were, however, inadequate, so that the Board of Estimate and Apportionment substantially controlled the Board of Education's finances by conditioning additional appropriations upon the observance of the Board of Estimate's rules and regulations regarding the segregation of appropriations and accounting control. The tendency grew to regard the Department of Education as a regular department of the city government and the Legislature made little, if any, effort to realize in its contemporary legislation the ideal of educational independence which had been characteristic of earlier school legislation (notably Chapter 386 of the Laws of 1851), and such measure of independence as was contemplated in the charter of 1901 was, as indicated above, greatly reduced by subsequent legislation or by acquiescence.

By 1917, the Department of Education was functioning very much as a regular city department. The 3-mill allowance was so

inadequate that the Board of Education would have been helpless had the City not granted additional funds to run the schools. The budget for 1917, for example, appropriated \$41,430,447.49 for the general and special school funds, while the amount yielded by the 3-mill tax and included in the budget for that year, was only \$25,753,057.53. The Department of Education acted with and depended upon other city authorities, such as the Corporation Counsel, the Department of Finance, Board of Estimate and Apportionment and the Sinking Fund Commission, in connection with its contracts, leases, real estate transactions and proposals for the construction of new schools. It is probably safe to say that what independence the Board of Education may have had under a strict interpretation of the law was not exercised.

The situation was radically changed by the enactment of Chapter 786 of the Laws of 1917, which amended the State Education Law, by providing for Boards of Education in the several cities of the State and which repealed nearly all the sections of the New York City Charter with respect to the public school system. The advocates of this legislation contended that public education in cities was as much a matter of State concern as in villages and towns, and that the many varying laws controlling school systems should be brought together and made an integral part of the State Education Law.

The consolidation and unification which was effected, however, is strikingly similar to the kind of consolidation effected by the first charter of the Greater City, where the customs and machinery of the two cities of New York and Brooklyn were, to a considerable extent, perpetuated in the new instrument. The State Law of 1917 provides for about as many different kinds of Boards of Education as there were before, and it preserves the rights enjoyed by certain communities and jealously defended by them. It has the virtue of including, in one article, most of the provisions of law relative to city schools, but it does not provide a consistent or a uniform system of control.

EDUCATION UNDER THE PROVISIONS OF CHAPTER 786, LAWS OF 1917, AS AMENDED THROUGH 1921.

It is not necessary in the present connection to comment on the patchwork character of this law. The powers, duties and composition of boards of education in the larger cities of the State differ amazingly, and the organization of the school systems left in some cities to local control is in New York prescribed with regard to certain phases such as the Board of Superintendents and the Bureau of Compulsory Education. It is enough to compare the conditions under the charter of 1901 as it stood in 1917, with the present legislative provisions.

The following analysis of the more important provisions of both statutes is submitted in parallel columns to facilitate comparison:

Section Charter Provisions

1055 School property vested in city under control of Board of Education.

1059 Board of Estimate and Board of Aldermen given power to raise by tax amounts required for school purposes, as called for by annual city budget.

1060 General and special school funds established and Board of Education given power to administer "all moneys . . . available for educational purposes in the city of New York."

1061 Board of Education created to consist of 46 unpaid members appointed by the mayor for 5-year terms: 22 from Manhattan, 4 from the Bronx, 14 from Brooklyn, 4 from Queens, 2 from Richmond.

1062 Board of Education given corporate powers.

1064 Board of Education to be representative of entire school system. By Sept. 15th to submit annually to Board of Estimate a detailed estimate

Section State Law Provisions

868-3 Charter sec. 1055 not repealed. Board of Education given care, custody and control of all city school property.

Charter sec. 1059 repealed.

877-7 Charter sec. 1060 repealed. General and special school funds defined and established, and Board of Education given power to administer "all moneys . . . available for educational purposes in the city," subject to audit by the Department of Finance.

865-866 Charter sec. 1061 repealed. Board of Education created to consist of seven members: two from each of the two boroughs with the largest population, and one from each of the other three appointed by the mayor for seven-year terms.

300 Boards of education in cities made corporations.

877-1 Charter sec. 1064 repealed. Board of Education by September 1st to submit annual estimate for ensuing fiscal year to Board of Estimate and Appor-

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of moneys required for next calendar year. Board of Estimate required to appropriate for general school fund not less than the yield of 3 mills. Board of Education to administer all moneys subject to audit by Department of Finance.

1066 Board of Education empowered to dispose of personal property.

1067 Board of Education empowered to appoint secretary, superintendent of school buildings, superintendent of school supplies, city superintendent of schools, supervisor of lectures, director and assistant director of reference and research, and one or more auditors; also a chief clerk and "such other officers, clerks or subordinates as it may deem necessary . . . and as are provided for by the proper appropriations." These appointees removable for cause by three-fourths vote.

1068 Board of Education empowered to enact by-laws, rules and regulations for the transaction of its business and "defining the duties of the city superintendent of schools, the director and assistant director of the Division of Reference and Research, the superintendent of school buildings.

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877-7 tionment, which is required to appropriate the amount of such estimate up to the yield of 4.9 mills. Board of Estimate authorized to make additional appropriations. Board of Education empowered to administer all moneys available for educational purposes subject to audit by Department of Finance. Board of Education may submit special estimates to meet emergencies.

Charter sec. 1066 not repealed.

868 Charter sec. 1067 repealed. Powers and duties of Board of Education as follows: To perform any duty imposed by State law or regulation of the University of the State of New York or Commissioner of Education; to create, abolish, maintain and consolidate such positions, divisions, boards, or bureaus as it deems necessary; to appoint a superintendent of schools, such associate district or other superintendents, etc., as it deems necessary, and to determine their duties, except as otherwise prescribed by the Education Law; to appoint

872 district superintendents, directors, supervisors, principals, teachers and all other members of the teaching and supervising staff upon recommendation of the Board of Superintendents (except associate superintendents and examiners) and to appoint associate superintendents and examiners and all other employees (except members of the teaching and supervising staff, the appointment of whom must be on recommendation of Board of Superintendents).

868-9 Charter sec. 1068 repealed. Board of Education empowered to prescribe such regulations and by-laws as may be necessary to make effectual the provisions of this chapter, etc.

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the superintendent of school supplies, of its auditor or auditors, its clerks and subordinates," etc.

1069 Additional powers of Board of Education:

1. To establish and conduct elementary schools, kindergartens, manual training schools, trade schools, truant schools, evening schools and vacation schools.
2. To maintain free lectures and courses of instruction for the people of the city of New York.
3. To provide special classes for instruction in English to foreigners.
4. To provide "one or more high schools and training schools."
5. To establish and conduct playgrounds in connection with the public schools.
6. To establish new schools and discontinue or consolidate any schools.
7. To make contracts with approval of board of estimate for transportation of pupils.
8. To establish a bureau of compulsory education, school census and child welfare. "On the nomination of the board of superintendents the board of education shall have power to appoint a director and an assistant director" and other employees, and fix their salaries within the proper appropriation.

1070 Secretary to have charge of rooms, books, papers, etc., of the board and to perform "such other duties as may be required by its members or committees."

1071 Board of Education empowered to establish branch offices of the bureaus of school buildings and school supplies in the several boroughs, superintendent of school buildings to be executive officer of the board "in respect to all matters relating to the bureau of buildings."

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868-5 Charter sec. 1069 repealed except subdivision 8. Board of Education has power to establish and maintain such free elementary schools, high schools, training schools, vocational and industrial schools, kindergartens, technical schools, night schools, part-time or continuation schools, vacation schools, schools for adults, open air schools, schools for the mentally and physically defective children, or such other schools or classes as it may deem necessary, and to establish and maintain libraries, public lecture courses, playgrounds, recreation centers, social centers and reading rooms.

871-a Bureau of compulsory education, school census and child welfare made mandatory, employees continued in office during good behavior and removable only for cause.

Charter sec. 1070 repealed.

Charter sec. 1071 repealed.

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- 1073 All plans for new school buildings, additions and structural alterations must be approved by superintendent of school buildings, who shall submit such plans to Board of Education, whose action shall be final.
- 1074 Janitors shall be appointed by the Board of Education.
- 1075 Board of Education shall provide for purchase of all books, supplies, etc., and shall have power to enact by-laws and resolutions for government of superintendent of supplies, which by-laws, etc., shall provide that all supplies as far as possible shall be obtained by contract after public letting in accordance with section 419.
- 1076 Bureau under superintendent of supplies to be subject to rules and regulations of Board of Education. Superintendent of supplies may appoint such deputies and other subordinates as the by-laws of the Board of Education may authorize. He shall be the executive officer of the board in respect of supplies, printing, transportation of pupils and such other matters as may be assigned him by the board.
- 1077 City superintendent shall have right of visitation and inquiry in all schools of the city and shall report to the board thereon. He shall have a seat and a right to speak in the board meetings, but no vote.
- 1078 City superintendent shall visit schools and, subject to by-laws, prescribe forms and regulations for conducting school business. Under direction of Board of Education he shall enforce Compulsory Education Law. He may appoint clerks as authorized by the Board of Education, and assign, suspend or discharge them subject to appeal to the Board of Education. He shall

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- Charter sec. 1073 repealed.
- Charter sec. 1074 repealed.
- 868-4 Charter sec. 1075 repealed. Board of Education to secure necessary books, supplies, etc.
- Charter sec. 1076 repealed.
- 870-1 Charter secs. 1077 and 1078 repealed. Superintendent of schools shall have power, subject to by-laws, to enforce all rules, etc., relating to the management of the schools, etc.; to be the chief executive officer of the Board of Education and the educational system; to have a seat and voice but not a vote at board meetings; to
- 4 have supervision and direction of all persons employed by the Board of Education; to transfer teachers on recommendation of board of superintendents; to suspend any employee until next meeting of Board
- 5 of Education; to have supervision and direction over the enforcement of courses of study and all the other educational activities under control of the Board of Education; to issue

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assign associate and district superintendents subject to by-laws. Twenty-three district superintendents to be assigned, each one to two local school board districts.

1079 Board of superintendents established, consisting of city superintendent and eight associate superintendents appointed by the Board of Education for six years. Board of Education empowered to pass by-laws regulating duties of city superintendent and board of superintendents. There shall be twenty-six district superintendents to be appointed by Board of Education for six years on nomination of board of superintendents. Board of Education empowered to appoint directors of special branches for six years on nomination by board of superintendents.

1032 Board of superintendents, subject to approval of Board of Education, shall establish rules governing promotion, transfer, etc., of pupils.

1083 Board of Education shall, upon recommendation of board of superintendents, approve text books, etc.

1084 Board of Education shall have power to change grades and adopt and modify courses of study, but such changes must first be presented to board of superintendents and, in case of adverse report by latter, change shall not be effective unless passed by two-thirds vote.

1087 Creation of forty-six local school board districts and local school boards of five persons appointed by borough president, district superintendent and **Board of Education** member.

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licenses to teachers on recommendation of board of exam-

870--6 iners; to have general supervision of bureau of compulsory education, school census and child welfare.

869 Charter sec. 1079 repealed. Board of superintendents continued, consisting of superintendent of schools and eight associate superintendents, superintendent to be chairman. It has power to prepare the content of each course of study authorized by Board of Education, subject to approval by Board of Education; to recommend text books; to recommend to superintendent the transfer of teachers.

870--5 Charter sec. 1082 repealed. Board of superintendents to have power to make rules and regulations for promotion and graduation of pupils.

868--8 Charter sec. 1083 repealed. Board of Education has power to authorize and determine text books from lists recommended by board of superintendents.

868--7 Charter sec. 1084 repealed. Board of Education has power to authorize the general courses of study and to approve the content of such courses before they become operative.

873 Charter sec. 1087 repealed. Local school board districts continued, but Board of Education given power to modify boundaries, consolidate two or more and establish new ones. Local school boards to consist of five persons appointed by the borough president, a member of the Board of Education designated by the board, and a district superintendent assigned by the city superintendent.

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1088 Duties of local school boards:

1. To visit and inspect schools at least once each quarter.
2. To report on needs for new accommodations, recommend sites, repairs, etc.
3. To report dereliction of duty.
4. To excuse teachers' absences, subject to approval of board of superintendents, for absence with pay, and in accordance with by-laws.
5. To try and determine all matters regarding discipline and corporal punishment.
6. To try charges against a teacher.
7. To transfer teachers within district, after hearing and subject to approval of board of superintendents.

1089 Board of examiners created to license teachers, consisting of city superintendent and four persons appointed by Board of Education upon nomination by city superintendent.

1090 Principals, branch principals, heads of departments, teachers, assistants and all members of teaching staff shall be appointed by Board of Education on nomination of board of superintendents, from established eligible lists.

1091 Board of Education shall have power to fix salaries of members of supervising and teaching staff subject to certain minimums prescribed by the statute.

1093 Board of Education empowered to suspend principals, teachers, etc., with or without pay, pending trial of charges preferred against them.

1096 Mayor can remove any member of Board of Education or local school board for causes specified.

1098 Board of Education may remove any school officer interested in furnishing supplies, etc.

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873-4 Charter sec. 1088 repealed.

Powers and duties of local school boards:

1. To visit schools at least once in each quarter.
2. To make recommendations to Board of Education.
3. Subject to by-laws of Board of Education, to transfer teachers, excuse absences of teachers, and hear charges against principals or teachers.

871 Charter sec. 1089 repealed. Board of examiners to consist of seven members to hold examinations and promulgate eligible lists, and perform the duties required by Board of Education.

Charter sec. 1090 repealed.

See sec. 872 summarized above.

882 Board of Education shall adopt by-laws fixing salaries of members of teaching and supervising staff, but they shall not be less than the rates prescribed by the State.

Charter sec. 1093 repealed.

Charter sec. 1096 not repealed.

Charter sec. 1098 not repealed.

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- 1099 Contributions by members of teaching or supervising force to funds to affect legislation increasing their emoluments, prohibited.
- 1100 Board of Education may investigate any subject over which it has legal control or of which it has cognizance, including conduct of employees.
- 1101 Continuance in office of all employees under public school system.
- 1102 State school moneys payable to city and credited to general fund for reduction of taxation.

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- Charter sec. 1099 not repealed.
- Charter sec. 1100 not repealed.
- Charter sec. 1101 not repealed.
- Charter sec. 1102 not specifically repealed.
- 880 State school moneys to be credited to the Board of Education as well as all funds raised by the city for any purpose authorized by the educational chapter.
- 877-10 Board of Education shall not incur a liability chargeable against its funds or the city in excess of the amount available therefor, or otherwise authorized by law.
- 879-4 Board of Estimate authorized to raise in its discretion money for new schools, sites, etc.
- 880-3 Board of Education to make such classification of accounts as the comptroller of the city shall require.

From the above comparative summary the following outstanding features of the new law are apparent, viz.:

1. Reduction in size in Board of Education from forty-six to seven members.
2. Possibility of conflict between the Board of Education and the Superintendent of Schools relative to their respective powers.
3. Possibility of conflict between the Board of Education and the municipal authorities relative to their respective powers.
4. Failure to concentrate in clear and unmistakable language full responsibility for the proper administration of the public school system either on the municipal authorities, the Board of Education or the State of New York.

5. Limitation of the powers of the Board of Education.
6. Great increase in the powers of the Superintendent of Schools.
7. Perpetuation of the Board of Superintendents.
8. Perpetuation of the Bureau of Compulsory Education, School Census and Child Welfare.
9. Conflict between section 1102 of the charter, which was not specifically repealed, and the State Education Law relative to the disposition to be made of the city's share of the State school moneys; the former providing that such money be credited to the city's general fund for the reduction of taxation, and the latter that it be credited to the Board of Education.
10. Increase from three mills to four and nine-tenths mills in the amount which the City is required annually to appropriate for the use of the Board of Education.
11. The inclusion within the State's educational system of city boards of education, including the Board of Education of the City of New York and the subordination of the municipal authorities to the State in matters of school administration.

The new law effecting these changes in the status of the local educational system has been in force for almost four years and its adequacy and effectiveness should be easily determinable from the history of the public schools during that period. A considerable amount of data bearing on this subject has been collected and the President of the Board of Education, the Superintendent of Schools and the Superintendent of School Buildings have been examined at public hearings. The following discussion of the degree of success with which the State Education Law has been administered is based upon a combination of sworn testimony and independent examination of the school records.

1. Reduction in size of the Board of Education from 46 to 7 members.

One of the most popular features of the new law at the time it was before the Legislature for enactment was that it reduced the size of the Board of Education in New York City from the unwieldy number of 46 to the small compact number of 7. But the experiences of the past four years have shown that good school

management depends on more than the size of the board. A board of 7 must be composed of exceptionally conscientious and capable persons if it is to discharge satisfactorily its many responsibilities, and it must be composed of recognized authorities in the field of education and business if it is to command public respect. The appointments made to the new board of 7 do not seem to have been made with due regard to these considerations. It is doubtful if the names of the present members are known to more than a small proportion of the city's population, and if the names are known, it is exceedingly doubtful if the qualifications of these members are known. The President of the Board of Education admitted on the witness stand that prior to his appointment to the Board he had not been specially interested in educational matters or administration (Vol. III, p. 1205). In response to further inquiries he stated that he was in the real estate business, although at the present time he was not actually engaged in any business. As to his personal educational qualifications, he stated (Vol. III, p. 1205) that he was a common school and high school graduate, but had not attended college.

In January, 1922, the President of the Board of Education resigned his office and accepted a political appointment to a \$7,000 job as Commissioner of Taxes and Assessments. The person appointed by the Mayor to fill the vacancy occasioned by the President's resignation has, according to the City's civil list, been a paid employee of the City of New York, from 1914 to the end of 1921, his last position being that of Commissioner of Public Works, at a salary of \$5,500, under a Borough President whose term of office expired December 31, 1921.

One of the most important committees of the Board of Education is the committee on buildings and sites. The chairman of that committee is the personal physician of the Mayor's family. Without wishing to reflect in any way upon the probity of the individuals in question, or upon other members of the present Board of Education, the committee believes that the persons appointed during the last four years do not all possess the highest qualifications for membership on this important body.

The newest appointee is almost totally unknown outside of his own borough. Even in his own borough he is not conspicuous for his knowledge of and interest in educational problems.

The law establishes qualifications for the office of Superintendent of Schools and other members of the professional staff,

but members of the Board of Education who are to determine the educational policies to be carried out by these professional schoolmen may be selected with regard only to the borough of their residence. With no other check upon the appointing power, it is not surprising that political considerations should carry great weight. Politics should be kept out of the public schools and some statutory safeguard should be erected to insure the selection of persons qualified for other than political reasons for membership in the Board of Education. This can be done by requiring appointments to the Board of Education to be made by some non-political agency; that the desirability for some such provision is more than theoretical is adequately established by the evidence below.

The best test of the qualifications and competency of the present Board of Education is afforded by its record of the past four years, a brief account of which will now be submitted.

a. Inadequate School Accommodations.

In December, 1917, the month before the present Board of Education took office, there were 746,114 children registered in the day elementary schools, of whom 34,153 were on part time and 76,214 on the so-called duplicate form of organization. In October, 1921, the last month for which figures are now available (December, 1921) there were 817,210 children on register in the day elementary schools, of whom 81,242 were on part time and 194,234 on double session.

In the day high schools there were 58,063 registered in December, 1917, none of whom were on double session and only 1,796 were on part time. In October, 1921, the register had increased to 82,265 and there were 1,516 children on double session and 33,892 on part time.

These figures demonstrate conclusively that the Board of Education has not provided sufficient additional school accommodations to care for the growth of school population. It is a serious reflection upon New York City that 115,134 children should be deprived of a full day's schooling and that 195,750 children should be subjected to the disadvantage of the double session expedient to which the city has resorted. Such a condition is intolerable and the fault lies with the Board of Education, the city authorities, or the provisions of law under which they operate. If the trouble is with the law, it is the duty of the Board of Edu-

cation to seek such amendments as will obviate the difficulty. Unless the Board has actively concerned itself with desirable modifications of the statute, however, it cannot be free from blame for the failure to provide the necessary accommodations.

The conspicuous failure to provide sufficient accommodations for elementary school pupils is demonstrated by the foregoing figures. Confirmation is afforded by the compilation of statistics showing the capacity of new elementary school buildings and additions opened during the past four years. The records show the following:

Year	No. of New Buildings or Additions Opened	No. of Sitzings Therein
1918.....	2	1,294
1919.....	4	1,380
1920.....	None	None
1921 to Dec. 6.	16*	19,203
Total....	<u>22</u>	<u>21,877</u>

* Of the 16 opened in 1921, all but two were opened after September 1st.

During the preceding four years, 44 new elementary buildings or additions were opened, with 52,847 sittings, so that the record of the present Board of Education is unsatisfactory, both as compared with requirements and as compared with the accomplishments of its predecessor.

Various reasons have been given by city and school officials to explain the delay in school construction, the war being the one most frequently mentioned. The record, however, does not indicate that the war played more than an incidental part in this matter. At the time the small Board of Education took office, it found a building program prepared by its predecessor, calling for the erection of certain specified buildings, and plans were practically completed for several typical schools. In addition there were authorizations aggregating about \$10,000,000 from which the cost of construction could be defrayed. The new Board, however, did not make use of this program or of the funds. On May 10, 1918, the President of the Board reported that "this Board undertook to set aside all previous plans and begin de novo," and on December 30, 1918, the Board of Estimate rescinded the authorizations made by the previous administration for new school construction. The first bids called for by the new Board were for P. S. No. 29, Brooklyn. They were opened July 10, 1918. The contract was let but was later rescinded at the

request of the War Industries Board. It would appear, therefore, that the only delay in school construction actually attributable to the war and the rules of the War Industries Board was the four month period from July when the first contract was awarded, and November, when the armistice was signed. On November 13, 1918, the Superintendent of School Buildings reported that plans and specifications for fourteen new buildings and additions were ready for the estimating table, but the first construction contract was not let until March 24, 1919. During 1919 fourteen construction contracts were let and all fourteen covered buildings on the program of the previous administration for which the funds had been authorized by the previous administration. It took the new Board of Education more than fourteen months to go ahead with the identical schools selected by its predecessor.

It is difficult to find a satisfactory explanation of the delays in school construction. The passive role played by the Board of Education was one factor. It received pressure and criticism from the Mayor and from the city authorities and it encountered obstacles in its own organization and procedure, but instead of responding actively to the pressure or striving vigorously to overcome the obstacles it apparently more or less acquiesced in conditions as it found them. The following quotations from letters of the Mayor and from the testimony of the President of the Board of Education are illustrative of this point.

On August 8, 1918, the Mayor wrote to a member of the Board of Education in part as follows:

“Six months of our administration have passed by and very little has been done toward the construction of schools. If Mr. Snyder cannot build more than one or two schools at a time, would it not be a good idea to replace him with a man who could have five or six schools in the course of construction at the same time?

“If the Board of Education will first figure out how many schools can be constructed with the money now available and after conferring with the Presidents of the various boroughs will then recommend where the schools are immediately required, I will then submit your plan to the members of the committee on finance and budget, so that action can be at once taken and at least seven or eight new schools be started without any further delay. . . . You have a standard type of school. You have some school sites where

schools are necessary. If you have not enough, let us proceed to secure a sufficient number of sites in accordance with the money we have on hand and start the schools at once."

This letter was read into the testimony and the President of the Board was then questioned as follows (Vol. III, p. 1264):

"Q. Now, at the time you received that letter, the \$10,000,000 authorization was in force? A. Yes, sir.

"Q. Remained in force until the 30th of the following December? A. Yes, sir.

"Q. But that letter did not result in any action along the line of new school buildings under that authorization? A. Well, no; not under that particular authorization, no.

"Q. Well, or any other authorization until after December 30th? A. I can't recall whether it was prior to that date that the Board submitted its program for 27 new elementary schools.

"Q. You said in May that you had made a complete new program and wiped out the old program? A. Yes. But I think perhaps that program had been sent in—I am not certain—I think it had been sent in before the receipt of this letter."

On October 17, 1918, the Mayor wrote again, in part, as follows (Vol. III, p. 1266):

"The question of a sufficient number of new school buildings in this city to properly house the school children is giving me great concern. . . . We have some ten millions of dollars available for building schools. I would like to have that money employed for that purpose and I would like to begin making preparations for the construction of these schools at once. Mr. Bernard Baruch, representing the Government of the United States, has declared that we cannot at this time have the material necessary for the construction of a certain type of school building . . . if we cannot build one type of school building we can build another equally good type of school building. If we cannot use steel construction we can use reinforced concrete construction."

The examination of the President of the Board then proceeded as follows (Vol. III, p. 1268):

“ Q. Now, the Mayor wrote on October 18th that very urgent letter to you, hoping you would use that \$10,000,000, and I do not understand how, in view of a letter of that kind from the Mayor, you did not begin to operate on the ten million dollars. A. Well, I can't very well answer that, Senator, for this reason: First, I was not the President of the Board at that time and I was not on the Building Committee at any time, never on the Sites and Buildings.

“ Q. You seem to be a good man to write letters to. A. But we were at that time under that ban, and I do not know whether or not at that time the Board understood just what this ten million dollars meant, whether it was tied up specifically on certain sites or buildings, I really couldn't say.

* * * * *

“ Q. I can't make out, in view of this correspondence, how it was that the 1918 program, the 1918-1919 program of the Board of Education was delayed the way it was. I am unable to find out. A. Well, it made a contract, as I understand in the beginning, we advertised for several contracts; we made one when the ban was put on. That ban was not removed until November, until after the Armistice was signed.

“ Q. The 11th of November? A. Until after the Armistice. Now this letter came in October, and the other letter in July.

“ Q. Yes; from August to November, there was a hiatus there. A. Well, we were helpless at that time.

“ Q. What? A. We were absolutely helpless, as far as making contracts was concerned.

“ Q. About three months? A. Oh, no; it is more than that, from July until practically the end of the year.

“ Q. That would be four months. . . .”

The foregoing quotations show the Mayor's impatience at the failure of the Board of Education to accomplish more and demonstrate how imperfectly the President of the Board of Education could explain the Board's failure. Every member of a small board should be familiar with such vital matters as insufficient school accommodations and every member should charge himself with the duty of facilitating a building program that is so sorely needed, and with the responsibility of eliminating obstacles to the completion of such programs. That there are many obstacles in the existing practice is shown below:

Superintendent of Schools	directs preparation of building program by
Associate Superintendent Shallow	who studies city's needs, reports on order of urgency and, with assistance of superintendent of school buildings, estimates cost of program, which he recommends to the
Board of Superintendents	which considers, and then makes specific recommendations to the
Board of Education	which considers program through its committee of the whole or committee on buildings and sites, and then acts on such committee's recommendations, sending its recommendations to the
Board of Estimate and Apportionment	which has recommendations examined by its committee on finance and budget and its engineers and acts upon their report, then notifying the Board of Education of its action.
Associate Superintendent Shallow	reports on layout of individual buildings in approved program to
Board of Superintendents	which acts thereon and sends its recommendations to
Board of Education	which considers and takes appropriate action
Superintendent of School Buildings	as soon as site is acquired, and survey received, selects type best suited to neighborhood and causes detailed plans to be prepared, submitting preliminary and final drawings to
Municipal Art Commission	which must approve design before buildings can be erected; when this approval is given the general construction plans and specifications are submitted by the Superintendent of School Buildings to
Bureau of Buildings	of appropriate borough for examination and approval, while the plans and specifications for heating and ventilating (prepared by bureau of plant operation) and for plumbing, gasfitting and electrical work are submitted to the
Department of Water Supply, Gas and Electricity	for examination and approval. These plans and specifications, together with those for furniture and all other equipment, are also transmitted to the
Board of Education	which, after approving them, forwards them to the

Board of Estimate and Apportionment	which, through its committee on finance and budget and its engineers, examines the plans and specifications for general construction, sanitary work, heating and ventilation, and electrical work, together with those for furniture and all other equipment, acts thereon and notifies the
Board of Education	of its action, and when this action is favorable the Board of Education informs the
Superintendent of School Buildings	who then submits proposed advertisement and contract to the
Corporation Counsel	for approval, and when this approval is obtained the
Superintendent of School Buildings	advertises for bids in the City Record for ten days, then opens bids and reports thereon to
Board of Education	which may award the contract, if the bid is within the authorized amount. If not within the estimate, the Board of Estimate and Apportionment must approve the increase before the contract can be awarded. After the award the
Board of Education	notifies the
Comptroller	who examines and passes on the sureties and returns bonds to
Board of Education	which then signs contract, has it recorded by its auditor and returns it to the
Comptroller	who gives final approval as to financial ability and then advises
Board of Education	which notifies the
Superintendent of School Buildings	who notifies appropriate
Deputy Superintendent	who directs
Contractor	to start work.
Final payment cannot be made to the contractors until the Municipal Art Commission issues a certificate that the building is in accordance with approved plans.	

An examination of the periods of time actually consumed by the various agencies cooperating in the construction of schools also disclosed some most significant facts. A brief life history was composed for each of the schools on the Board of Education's building program. In two instances it was found that twenty years or more had elapsed from the time the recommendation for a new building was made by a local school board and the time when the building was opened for use. P. S.

No. 54, Brooklyn, for example, was recommended by the school board of Brooklyn in 1901; the contract date for its completion is September, 1922.

There is also delay due to the requirement that plans and specifications be submitted to the Board of Estimate for approval. The examination of the record of some twenty schools on the current building program shows that plans and specifications were before the Board of Estimate in one instance for 356 days, another for 211 days, and in eight cases for more than 50 days. This did not take into account the time between the return by the Board of Estimate and a resubmission by the Board of Education. In one case the same matter was four times before the Board of Estimate. In four other cases the same matter was before the Board of Estimate three times.

A further index of the actual accomplishments of the Board of Education in providing additional school facilities is afforded by the following table of authorizations and expenditures for such purposes, annually from 1910.

STATEMENT SHOWING THE CORPORATE STOCK AUTHORIZATIONS
AND CASH EXPENDITURES FROM JANUARY 1, 1910, to JUNE
30, 1921

Year	Authorizations	Cash Expenditures (Sites and Buildings)	
1910.....	\$5,270,173 26	\$2,632,110 72	
1911.....	12,138,387 39	4,388,647 65	
1912.....	360,490 00	4,851,716 26	
1913.....	6,131,085 00	4,726,394 67	
Total.....	\$23,900,135 65		\$16,598,869 30
1914.....	\$798,194 89	\$5,386,927 68	
1915.....	1,505,500 00	4,138,094 66	
1916.....	6,172,084 68	2,567,537 06	
1917.....	6,797,571 13	2,177,079 21	
Total.....	15,273,350 70		14,269,638 61
1918.....	*\$678,754 24	\$2,233,113 32	
1919.....	7,000,000 00	2,648,070 46	
1920.....	8,000,000 00	5,562,616 73	
1921.....	15,250,000 00	4,780,531 46	
Total.....	29,571,245 76		15,224,331 97
Grand Total.....	<u>\$68,744,732 11</u>		<u>\$46,092,839 88</u>

* Net rescindment.

It will be noted that the expenditures of the three and a half years, 1918 to July, 1921, were but \$15,224,331.97 which, in view of the depreciated value of the dollar during all this period rep-

resents not more than \$8,000,000 in building value on the basis of 1910 to 1917, or about one-half of the previous four-year totals.

The average annual authorization for the eleven and a half years covered in the above table was \$5,977,802.79 and the average annual expenditure \$4,008,073.03, or about \$6,000,000 and \$4,000,000, respectively.

b. Fire Hazards in the Schools.

It is the duty of the Bureau of Fire Prevention of the Fire Department and the Bureaus of Buildings in the five boroughs to inspect school buildings to determine whether the requirements of law respecting exits and the elimination of fire hazards are being complied with. In the event that violations are discovered, it is the duty of these bureaus to serve notice thereof on the Board of Education.

An examination was made of the records of the Board of Education with respect to such violations. It was found that at the time of this examination, August, 1921, there were 7,353 violations of fire prevention rules recorded against 496 of the city's 695 school buildings. The Committee's engineer estimated the cost of removing these violations at about \$4,500,000. Some of the violations are less serious than others, but, on the other hand, some are of the very greatest moment, as, for example, stairways that are not enclosed with fire and smoke proof partitions and not provided with self-closing doors; interior fire alarm systems that do not work; wooden and not self-closing fireproof doors along the line of exit stairways; no hand fire extinguishers; and storage of dangerously inflammable materials in non-fireproof rooms or compartments.

The seriousness of this situation is emphasized by the words of the Superintendent of School Buildings, quoted in the minutes of the Board of Education for March 23, 1921, as follows:

“ This with the continued growth of the schools and consequent overcrowding and congestion, causes me great uneasiness and distress of mind. If the fire prevention work was and is required for schools under normal conditions, how much more important must it be when a building contains quite one-half or more in excess of the normal . . . why paint and renovate the interior of a building when there are essential items of fire prevention work to be performed which would actually operate to safeguard life and lessen fire risk.”

But in spite of the importance of this work and of the fact that many of these violations date back several years, only \$250,000 was made available for the removal of fire violations during the past four years, and that appropriation was not made until April, 1921. The following table shows how the schools have been neglected in this respect as compared with the years preceding this administration and while it should be stated that the Board of Education has made repeated requests since 1918 for fire prevention funds, these requests have not been effective.

AUTHORIZATIONS AND EXPENDITURES FOR FIRE PREVENTION
WORK AS OF AUGUST 10, 1921

Date of Authorization	Amount of Authorization	Expenditures	Balance
Sept. 16, 1904.....	\$300,000 00	\$300,000 00	.....
	550,000 00	550,000 00	.....
April 3, 1908.....	1,000,000 00	1,000,000 00	.....
June 3, 1910.....	450,000 00	450,000 00	.....
July 17, 1911.....	450,000 00	447,666 59	\$2,333 41
Nov. 19, 1915.....	250,000 00	250,000 00	.....
July 7, 1916.....	250,000 00	250,000 00	.....
April 20, 1917.....	250,000 00	240,660 85	9,339 15
April 22, 1921.....	250,000 00	.....	250,000 00

On September 14th the Committee examined the Superintendent of School Buildings on this subject. Significant portions of the testimony are given below (Vol. III, p. 1364ff):

“Q. Well, this question of doing away with violations of the fire prevention rules has been a matter of a good deal of concern to you for several years, hasn’t it? A. It has.

“Q. And you have made efforts to secure moneys for the purpose of correcting the conditions? A. Yes, sir.

“Q. You have reported it frequently to the Board of Education? A. I have.

“Q. And seen that it was presented to the Board of Estimate and Apportionment? A. That would not be for me to do.

“Q. That would not be your function? A. No, sir.

“Q. I see in your letter of Mar. 18, 1921, that you say: ‘The condition in relation to fire prevention with the continued growth of schools and consequent overcrowding and congestion, causes me great uneasiness and distress of mind.’ Is that true? A. It was.

“Q. ‘If the fire prevention work was and is required for schools under normal conditions, how much more important must it be when buildings contain quite one-half or more in excess of the normal?’ A. Yes, sir.

“Q. ‘I sincerely hope that a resumption of the carrying out of this most important work may be brought about without the stimulus represented perhaps by some awful accident, either here or elsewhere.’ You said that, didn’t you? A. That is in the letter, yes.

“Q. You adhere to it? A. I do.

“Q. And I notice you say, ‘These orders (that is, the fire prevention rules) have been and are now available at a moment’s notice. If there be no intention of granting funds for fire prevention work, then we should know it and make a study of the situation, looking to a decision as to whether or not all moneys for certain repairs should be used for this work.’ Was any such decision made to divert moneys for repairs generally to this work? A. What was the date of that letter, please?

“Q. March, 1921? A. No.

“Q. You need the money for other repairs that you get? A. We do.

“Q. And you use it for other repairs? A. We do.

“Q. I notice you say, ‘Why paint and renovate the interior of a building, when there are essential items of fire prevention work to be performed, which would naturally operate to safeguard life and lessen fire risk.’ A. That is a question of judgment.

“Q. ‘The situation becomes more serious with each day’s delay,’ and then comes an appeal to the Board of Education to apply to the Board of Estimate. I will read it: ‘I would earnestly recommend that the Board of Education adopt resolutions for transmission to the Board of Estimate and Apportionment, stating the stern necessity of prompt action upon the Board’s request for funds to enable the department to undertake immediately fire prevention work that is absolutely necessary if we are to safeguard properly the lives of the children entrusted to our care.’ That is your letter? A. I believe it is, yes, sir.

“Q. And I notice elsewhere that you state that if the correction of the violations was compelled, it would result in the shutting down of a lot of schools? A. Pardon me. I do

not think that that is quite the meaning of that paragraph as I recall it. I have not seen it in some time.

“Q. Well, I was trying to be brief. Sometimes I am brief at the expense of accuracy. A. I meant this, that the fire department have the right to close up any premises which it considers unsafe, and we might possibly be confronted—someone might reach such a decision, and we would be confronted with such a decision.

“Q. Here it says, ‘In the event, however, of the Fire Department enforcing through legal proceeding the carrying out of the orders now outstanding on our buildings, there would be no alternative, it would seem, except to close such structures for the time being, either in whole or in part, until funds had become available and the orders executed.’ A. That is what I had reference to.

“Q. That is an accurate statement, is it? A. That is what I had reference to. The Fire Department could do that.

“Q. I meant to state it in substance in that form? A. Yes, sir.

Senator Downing: Did the Fire Department close any school buildings?

The Witness: No, sir.

“Q. Here you say, ‘For instance, in Public School 117, Brooklyn, which was not originally intended for a school building, we have been obliged, much against the wishes of the District and Division Superintendents, to prohibit the use of the upper floor, owing to the absence of enclosed fire-proof stairway and other items, the cost of which was estimated about two years ago to be about \$34,000, and no funds being available for the work.’

In reply to a question as to how much money would be required to correct outstanding fire violations, Superintendent Snyder stated (Vol. III, p. 1368): “Around four millions of dollars.” The following quotation from the testimony gives Superintendent Snyder’s recommendation for the prevention of such an accumulation of uncorrected violations. (Vol. III, p. 1381).

“Q. Now what is the matter with the system? A. Why, the system was that there has never been a policy—the Board of Education was never in a position to fix a policy and go ahead and do the work systematically and know what it could do this year and next year and the year after that.

"Q. Because they didn't have the money? A. They didn't have the right to fix a policy.

"Q. To have the money? A. I wouldn't put it that way. They didn't have the right to fix a policy and the ability to carry it out when once fixed.

"Q. Where would you vest that power, where should it be vested so as to insure it being carried out? A. I think all these things resolve themselves simply down to this, that the Board of Education either should be absolutely independent and handle its own affairs and be able to fix its policy, or should know that it is not independent and must bow to the city departments or something of the kind. It is either one thing or the other, and everything can be traced to that one thing.

"Q. Would you regard the system under which this large accumulation of fire violations occurs, is wrong, needs correction? A. I believe it does; yes, sir.

"Q. By statute, by law? A. Whatever is necessary to bring it about. You know better than I do.

"Q. By law? A. Some way that it should be done.

"Q. And there should be some power in connection with the Board of Education which will enable it to meet these violations of the fire prevention rules as they come up? A. Yes, sir; and anything else that comes up.

"Q. Well, particularly these? A. Yes, sir."

c. Failure to Repair Fire Damage to Board of Education Building

In February, 1918, the seventh, eighth and ninth floors of the Hall of the Board of Education, at 500 Park Avenue, housing the executive offices of the Board, were completely burned out. Bids for the rebuilding of these floors were not, however, opened until December 7, 1921, nearly four years after the fire. During this interval the work of the Board has been seriously interfered with because of compulsory vacancy of the three top floors of its building. The Bureau of School Buildings, for example, had to be moved to inadequate quarters in the Municipal Building, several miles away from the other offices of the Board. The delay in agreeing on new plans, in securing an appropriation and in letting the contract lays the Board of Education open to the most serious criticism. No business corporation would tolerate such slovenly and inefficient methods.

The following extract from the testimony of the President of the Board of Education on this subject is illuminating (Vol. III, p. 1325) :

“ Q. Was there a fire in the Board of Education Building? A. * * * Yes, in our building.

“ Q. In your building? A. In February, I think, 1918.

“ Q. What did that do? A. Well, it destroyed, I think, the three upper floors of the building.

“ Q. How many floors have you got? A. It is a 9-story building.

“ Q. Did you need that room? A. Yes, we needed it badly.

“ Q. You have needed it badly during all that time? A. Yes.

“ Q. But it has not been restored? A. No, it has not.

“ Q. Only a temporary roof put on it? A. That is all.

“ Q. Is anything being done now to correct it? A. Yes. The Department is working on plans. The Building Bureau is working on plans.

“ Q. That is, the Building Bureau of the Board of Education? A. Of the Board of Education.

“ Q. Haven't they worked on plans before? A. Plans have been prepared, yes.

“ Q. They must have had the plans in the same year it burned, didn't they? A. No, we had no appropriation that year.

“ Q. You have to get plans before you get an appropriation, don't you? A. Yes, but I think we prepared plans but failed to secure an appropriation.

“ Q. That is, you prepared the plans in 1918? A. I am not sure. I think in 1918, yes.

“ Q. Right after the fire? A. And thereafter, I think the plans were changed. They were to change the stairways and make some other changes in the building.

“ Q. When were they changed? A. Well, that I can not tell you. The details as to that the Building Superintendent has.

“ Q. Who recommended the changes, the same Bureau? A. I think the members of the Board requested changes, and I think perhaps the Superintendent of Schools.

“ Q. Well, now, this plan for the repair of this building was submitted to the Board of Estimate when, first? A. I can't tell you, Senator.

" Q. 1918? A. I couldn't say; I would have to get the facts on that; I couldn't remember the dates.

" Q. It has been pending a long time? A. They were pending a long time, yes.

" Q. November 27, 1918, my records show? A. They were subsequently changed.

" Q. And presented again June 25, 1919, the record shows, and then again in July and then again March, 1920, and then in May, 1920, so you have made abundant application to the Board of Estimate? A. I have followed that up pretty closely myself personally. We were anxious to get in the building to have the building repaired and we were overcrowded, and as I say, we were very anxious to get in there.

" Q. You have needed the room all the time, it was occupied before the fire, wasn't it? A. It was necessary to have some of our departments housed outside of the building, because of lack of space there, due to the fire.

" Q. I say, it was occupied when the fire occurred? A. It was.

" Q. You have needed it ever since? A. We have.

" Q. You have had to hire some rooms outside? A. We have.

" Q. To what extent? A. Well, we are not hiring any rooms outside but we are occupying city owned property.

" Q. City property? A. Yes."

d. Incomplete By-Laws and Delayed Minutes

Matters of less public importance but of almost equal significance as indicating the degree of efficiency with which the Board of Education has administered the new Education Law are those relating to the revision of the Board's by-laws and the preparation of its minutes. The new law of 1917 so changed the organization and scheme of the school system that a complete revision of the by-laws was necessary in order to make them conform with the new statute. This complete revision had not, however, been made up to September 12, 1921, when the President of the Board of Education was examined on this point by the Committee. A few sections had been adopted in new form, but the great bulk of the by-laws was still in the form of a volume published in 1914 with literally hundreds of amendment slips pasted to the appropriate pages, many of which antedate

the law of 1917 and in the form of special documents containing salary schedules as enacted by the Legislature.

A Board which can permit a delay of nearly four years in the preparation and adoption of by-laws to govern the administration of the public school system of which it is the head, cannot escape criticism on the ground of incapacity or lack of interest in the great responsibility with which it is charged.

The Board has also tolerated during its term of office a condition which no business house would permit to exist for a moment. The minutes of Board meetings are records of the greatest importance to teachers, board members, board officers and city authorities as they are the official documents setting forth the Board's determinations and decisions. The last volume of minutes, however, to be furnished with a printed index is that for 1915. The index for 1916 is said to be completed, but it has not yet gone to the printer. A delay of five years in indexing current minutes is inexcusable. Another instance of the dilatoriness permitted by the Board is the fact that it takes the secretary's office about two months to issue printed minutes of Board meetings. The Committee has been on the mailing list for these minutes and on the day that this statement is written (December 7, 1921) the last meeting for which minutes have been received is that of September 28, 1921, and those minutes came only a few days ago. There has been a constant lag of about two months between board meeting and receipt of minutes ever since the Committee started inquiry in this direction.

It is generally agreed that a small Board of Education can be more efficient than a large board, and that the abolition of the former board of 46 members was most desirable. It seems quite certain, however, that a Board of Education of seven members is too small for the City of New York. Boards of Education in other cities of the state number from three to nine members; about twenty cities having boards of nine; about twenty-five cities having boards of from five to seven, and the others having boards of from three to five. It is not logical that New York, the largest city of the state, should have a Board of Education smaller than the Board of Education in twenty other cities with far less inhabitants. The New York Board of Education should be large enough to handle its problems effectively and yet not so large as to be unwieldy, and its term of office should be uniform with the terms of office of Boards of Education in the other cities of the state.

It seems equally certain that the statutes should impose some means for guaranteeing the quality of the local appointments to the Board of Education. Appointment should be made on the basis of qualification for the duties to be performed. An appointing officer with unrestricted power to appoint is subject to a degree of external political pressure to which it is difficult not to respond, and political considerations should play no part in the selection of members of a Board of Education.

From the foregoing account of the division of responsibility between city and educational authorities under the present statute, it is also clear that the only remedy lies in so amending the law as to centralize power in a single agency. If the Board of Education is to be responsible for the proper conduct of the schools, it should have the power to carry out its program without hindrance.

2. Possibilities of conflict between the Board of Education and the Superintendent of Schools, relative to their respective powers.

Under the Greater New York Charter, the Board of Education had specific power to enact by-laws "defining the duties of the city superintendent of schools." The Education Law of 1917 repealed this section of the charter (Section 1068) and did not enact an equivalent.

In addition to this negative act, it specifically constituted the Superintendent of Schools, "the chief executive officer of such board" (of education), and gave him power subject to the by-laws, "to enforce all provisions of law and all rules and regulations relating to the management of the schools." He was also given specific jurisdiction over the employees of the Board of Education.

The material for a serious controversy between the Board and its Superintendent was thus at hand and controversy developed. The new Board of Education adopted new by-laws, defining the powers of its President, of the Board and of its subordinates. The Superintendent of Schools felt that his prerogatives under the statute had been invaded by these by-laws and appealed to the State Commissioner of Education for relief. The Commissioner upheld him and directed the Board to amend its by-laws so as to eliminate the objectionable provisions. The significance of the decision by the Commissioner is indicated by the alterations that

were made by the Board pursuant to his injunction, some of which are quoted below.

First Version

Sec. 3. "Any salaried officer, clerk or other employee may be suspended by the President or Superintendent of Schools. . . ."

Sec. 4, Par. 2. "The President shall exercise general supervision over the transaction of the business affairs of the Board of Education and shall have the power to require that reports be made to him by any officer or employee for his use and information, or for presentation to the Board for its consideration and action. The Superintendent of Schools shall act in the administration of business affairs under the advice and guidance of the President."

First Version

Sec. 6, Par. 5. The Superintendent of Schools "shall recommend to the Board of Education the organization of day and evening schools and other educational and recreational activities into major divisions, each of which shall be supervised by an associate superintendent, to be assigned by the Superintendent of Schools, subject to the approval of the Board of Education."

Sec. 6, Par. 8. Relative to the Superintendent of Schools, "In his absence or inability to serve, the Board of Education shall designate an associate superintendent to serve as acting Superintendent of Schools."

Sec. 7, Par. 10. Relative to the Board of Superintendents, "It shall make rules and regulations with the approval of the Board of Education for the admission of pupils to the schools, for their promotion, graduation and for their transfer from one school to another."

Amended Version

"Any salaried officer, clerk or other employee may be suspended by the Superintendent of Schools. . . ."

"The President shall perform the functions that appertain to the office of a presiding officer. The Board may require that reports be made for its consideration and action by any officer or employee."

Amended Version

The Superintendent of Schools "shall recommend to the Board of Education the organization of day and evening schools and other educational and recreational activities into major divisions. Each of said divisions shall be supervised by an associate superintendent, to be assigned by the Superintendent of Schools."

"In his absence or inability to serve, he shall designate an associate superintendent as acting superintendent of schools."

"It shall make rules and regulations for the admission of pupils to the schools, for their promotion and graduation and for their transfer from one school to another."

The testimony of the Superintendent of Schools before the Committee on September 14, 1921, on this subject was as follows (Vol. III, p. 1407):

"Q. I understood you to say that reasonable coordination could be expected from the educational system as it is now

organized; that is, between the Board of Education and the Superintendent and the Board of Associate Superintendents. That works well, does it? A. Within the Board, yes. That is, between the Board of Education, the Board of Superintendents, and the Superintendent of Schools.

“Q. They cooperate with a reasonable degree of success and efficiency? A. Yes, sir, they do now.

“Senator Downing: In harmony?

“The Witness: Yes. It took a good while to get harmony, naturally. I might explain here that this new law created an entirely new condition, and the tradition was in the Board of Education that affairs should be carried on as they had been carried on before this law, and in the carrying out of the business of the Board, there may have been a little conflict with the powers of the Superintendent of Schools, as he conceived them, and the Superintendent of Schools, of course, in his high regard for the sacredness of his office, had to protest against any such action and appeal to the State Commissioner. That was perfectly natural. There was not any acrimony on either side. It was simply a definition of powers. It took two years to straighten that out.

“Q. You have it straightened out now? A. Yes, sir, it is straightened out now.

“Q. And the present workings are smooth? A. At present, yes, sir.”

A situation where a Board of Education, nominally the head of a school system, is by statute given inferior powers to those of one of its subordinates, is unwholesome and subversive of discipline. It is hard to see how a self-respecting Board of Education could acquiesce in such a condition. Responsibility and authority should be placed in the same hands. If a Board of Education is not deemed competent to administer the affairs of the school system, the remedy lies not in elevating an appointee of that Board to a position superior to that of the Board itself, but in changing the character of the Board.

A continuance of this unwholesome condition would be most unfortunate. The Board of Education should be the unquestioned fiscal and policy determining head of the school system and it should have full power to delegate to its subordinates the responsi-

bility of carrying out the policies upon which it determines. It is of course true that a Board of Education has not the technical pedagogical training possessed by the professional staff and that lay interference in the actual teaching of the children might be most dangerous, and that certain safeguards must be established by law which will insure a reasonable degree of freedom to the professional head of the school system. On the other hand there is ample evidence that the law under which the Board of Education now operates does not satisfactorily meet this problem. In a city like New York, which has the greatest educational problem in the world, it does not necessarily follow that the professional schoolman best qualified to carry out the educational program of the schools will also possess the qualifications to supervise the strictly business duties of the school system, such as the purchase of supplies, the construction and alteration of buildings, the assignment of janitors and other employees, etc., even if he had the time. In a smaller city, where these business matters do not constitute the burden that they do in New York, the Superintendent may be able to exercise the two functions without detriment to either. This is not likely, however, ever to be true in New York City, and yet under the present Education Law the Superintendent of Schools is made the executive officer of the Board of Education, with jurisdiction not only over the educational side of the Board's work, but also over the Board's business activities. Authority should, therefore, be given to the Board of Education to delegate the non-professional and administrative duties to some officer other than the Superintendent of Schools, if it deems it wise to do so.

3. Possibility of Conflict Between the Board of Education and the Municipal Authorities Relative to their Respective Powers

The repeal of most of the educational chapter of the charter and the enactment of an entirely new statute changing the relationship between the Board of Education and the city authorities afforded an opportunity for either friction or co-operation in the working out of the new relationship. From the records it appears that it was friction and not co-operation which resulted, and this in spite of the fact that the Board of Education was composed wholly of persons appointed by the present Mayor.

The chief points at issue are set forth fully in a brief submitted on April 4, 1919, by the Superintendent of Schools to a Com-

mittee of the Board of Regents, requesting relief from "the unlawful control of the public school system . . . by the municipal authorities." This brief noted the following points.

1. That the municipal authorities diverted the State school moneys for 1918 amounting to some \$2,300,000 from the Board of Education to the general fund for the reduction of taxation, following the provisions of Sec. 1102 of the charter instead of Sec. 880 of the Education Law.
2. That the municipal authorities sought to control educational policies and administrative details by a minute segregation of appropriations and the imposition of terms and conditions.
3. That the municipal authorities assumed a jurisdiction over administrative employees of the Board and by withholding their pay worked great hardship.
4. That the municipal authorities sought to gain entrance into the school system and establish jurisdiction over school affairs through the intrusion of the Commissioner of Accounts into the business of the Board.
5. That the attitude of the Mayor, as indicated by his oral and written utterances, was significant of the relationship between the City and the school authorities.

The Mayor's attitude toward school affairs was further developed in the testimony of the Committee, copies of letters written by him having been read into the record.

Extracts from these letters and from others in the Committee's possession follow:

(Vol. III, p. 1272) From the Mayor to Mr. Prall, Nov. 25, 1918.

The by-laws "now pending and supported by Superintendent Ettinger would place that department in a position that would require all reports upon investigations ordered by the Board of Education to come to the Board through the Superintendent. This is part of a policy which, if persisted in, makes the Superintendent a dictator and practically the superior of the Board of Education.

"Superintendent Ettinger is submissive to and is practically controlled by Cook, the Auditor, who is the troublemaker in the Board of Education and has little regard for the expenditure of money appropriated for educational purposes.

"I regret to be obliged to write you about this, but unless the Board of Education puts an end to the dictation of Cook, through Ettinger, there is little hope that we will be able to accomplish anything for the improvement of school conditions in this city. A year has almost passed and practically nothing in a constructive way has been accomplished by the new Board of Education.

"Won't you please exercise the rights given you under the law to see that the Board of Education and not the subordinates run the schools of this City?"

When questioned about the "Cook" referred to in this letter, President Prall testified, "He is an auditor, a very good auditor; understands his business thoroughly. We depend on him absolutely."

"Q. He has the confidence of the Board? A. We depend on him absolutely.

"Q. He has the confidence of the Board? A. He has.

"Q. And Ettinger the same? A. Yes, sir.

(Vol. III, p. 1277) From the Mayor to Mr. Prall, June 27, 1919.

"My Dear Commissioner: I wish you would confer with the members of the Board of Education and see to it that no increases in salary are made in the Educational Department, until such time as we find how financial matters stand in the Department.

"Cook, Ettinger and Company have so bungled matters that it will be hard to straighten things out."

(Vol. III, p. 1277) From the Mayor to Mr. Prall, June 14, 1919.

"Dear Sir: I note that Superintendent Ettinger, who is anxious to have the Legislature increase his salary by \$5,000, which the Board of Estimate and Apportionment opposed, is attempting to give the public the impression that the Board of Estimate and Apportionment is opposed to keeping open the swimming pools in the public schools. This is absolutely false, and Ettinger knows it.

"There has been \$45,000,000 appropriated by the present Board of Estimate and Apportionment for the public schools of the city, and out of that there will be sufficient to pay the few attendants necessary, the cost of which is less than \$7,000, to look after the swimming pools for the summer.

"Ettinger had no trouble in finding money out of the \$45,000,000 to start new activities so that his friends could get high salaried jobs and increases in salary for other Ettinger favorites.

"A man who resorts to such methods to mislead the public is not the proper person to be Superintendent of the Schools of the City of New York."

On August 6, 1919, the Mayor referred to the Police Commissioner for investigation an anonymous letter charging that the Superintendent of Schools had improperly pensioned a teacher. The Police Department made an investigation and reported on Sept. 3, 1919, naturally finding nothing to support the accusation as all pensions are under the jurisdiction of the Teachers' Retirement Board and not under the Superintendent of Schools.

On September 2, 1920, the Mayor wrote President Prall as follows:

"Dear Sir: I am in receipt of your letter of September 1st with reference to the refusal of the Department of Finance to honor the payrolls of the Board of Education so that the teaching force will receive the increases granted them under the mandatory legislation passed by the Legislature at its last session.

"The Board of Education should immediately begin mandamus proceedings against the Comptroller to compel him to pay the salaries now legally due the teachers.

"I have directed Corporation Counsel O'Brien to confer with you without delay to the end that the teachers' salaries be paid without any further quibbling."

On September 23, 1919, the Mayor wrote President Prall in part as follows:

"Ettinger bitterly opposed the investigation of the expenditure of \$44,000,000 appropriated for educational purposes. He now seems to have the City Club behind him to help him thwart your investigation of the finances of the educational department and other conditions in our school system. The Board of Education should take some action so that Ettinger will give his time to educating the children and bettering conditions in our public schools instead of playing education politics and making trouble for those who want school-houses erected and the children given a proper education."

On December 4, 1919, the Mayor wrote the Corporation Counsel as follows:

“ Dear Mr. Burr: I congratulate you upon your success in the Court of Appeals in the case of Hirshfield, Commissioner of Accounts of the City of New York against Cook, Auditor of the Educational Department. I understand the decision was unanimous in favor of the city investigating the financial condition of the educational system.

“ The Board of Education have at all times, as you know, been in favor of a thorough investigation of the financial condition of the educational system under Superintendent Ettinger, but this policy was opposed by Superintendent Ettinger and Auditor Cook, and other prominent persons in the city who for some reason, feel that the taxpayers should not know what is being done with their money. However, the Court of Appeals has sustained the city's contention and the investigation can now go on.

“ If Ettinger and Cook had not been encouraged by Finegan of the State Educational Department they would not have attempted to override the action of the Board of Education, their superiors, and the people of this city would have known long ago whether the finances of the Board of Education were being properly expended.

“ The decision of the Court of Appeals should be sufficient to convince Superintendent Ettinger that his superiors, the Board of Education, must be recognized, and that he cannot override them with the aid of Deputy Finegan at Albany.

“ Superintendent Ettinger can now devote his time to the proper housing and education of the children and the bettering of the moral tone of the schools of the city.

“ The people of the city appropriate millions of dollars yearly for the better education of their children. They want a sufficient number of school-houses to properly house the little ones and a thorough fundamental education given to them. They do not want their money wasted for unnecessary textbooks, fads, frills and fancies.

“ It is a pleasure to remember that the great judges of the Court of Appeals have stood by the people and against the traction interests in their fight for an increased fare, and again by the people and against those in the school system

who objected to the people knowing what is done with the millions they appropriate yearly for education, as well as the many other important cases which are of great interest and importance to the people."

On December 9, 1919, President Prall wrote the Mayor as follows (Vol. III, p. 1282):

"My Dear Mr. Mayor: Some time between Friday evening, December 5th, and yesterday (Monday) morning, December 8th, certain correspondence in my files, i. e., all the letters received by the President of the Board of Education from the Corporation Counsel, and all the duplicate copies of letters sent to the Corporation Counsel during the period from January, 1919, to date, were surreptitiously removed.

"I, therefore, respectfully request that you assign to this case capable men from the detective bureau of the Police Department in order that I may apprehend the person or persons guilty of this outrage."

Mr. Prall testified that he regarded this as an important loss but that the guilty parties were never apprehended. In reply to the question whether there were any matters pending at the time of the theft on which the correspondence had a bearing Mr. Prall stated (Vol. III, p. 1285):

"I think the controversy between the Superintendent of Schools and the Commissioner of Accounts was on at that time."

On December 20, 1919, the Mayor wrote President Prall a letter in which the following statement is made:

"There is no discipline in the educational system under Superintendent Ettinger. Certain principals and certain high officials spend little time performing the duties for which they are paid. Some action should be taken by the Board of Education to punish insubordination."

The person not already familiar with conditions in New York City during the past four years must read this correspondence with amazement. But even the foregoing extracts do not tell the whole story of the antagonism between municipal and educational authorities.

The Court of Appeals decided a case on November 22, 1921, that may prove of great significance in the future determination

of the relationship between municipal and educational authorities, but unless the City and the Board of Education can agree as to the bearing of this decision upon the current business of the public school system there may be frequent recourse to litigation of a similar nature. A certain cure would be the revision of the Education Law as affecting New York City. The decision referred to is printed in the New York Law Journal for December 20, 1921, and reads in part as follows:

“Section 880 of the Education Law provides that all funds collected or received from any source for school purposes shall be paid into the treasury of the city and shall be credited to the board of education; that such funds shall be disbursed *only* by authority of the board of education and upon written orders drawn on the city treasurer or other fiscal officer of the city, such orders to be signed by the superintendent of schools and the secretary of the board of education or such other officer as the board may authorize. The city treasurer is inhibited from permitting the use of said funds for any purpose other than that for which they are lawfully authorized, or paying out said funds *except on audit of the board of education* and the countersignature of the comptroller. A casual reading of the Education Law leads to the conclusion, so tersely stated in the Gunnison case, that the only relation of the city to the subject of education is as custodian of the school funds and to disburse the same according to the instructions of the board of education.

“The language quoted from subdivision 7, ‘the board of education shall administer all moneys appropriated or available for educational purposes in the city, subject to the provisions of law relating to the audit and payment of salaries and other claims by the department of finance,’ must be read in connection with section 880 of the Education Law, which provides that school funds shall be disbursed only by the board of education, and clothes that body with power of audit.

“The power vested in the board of education to administer the school fund is a grant of authority to that body to fix salaries of all employees of the board. Such salaries when fixed by the board are presumably embodied in the estimate filed with the board of estimate and apportionment. Upon receipt of a requisition from the board of education the

comptroller is authorized to ascertain whether or not the requisition made upon him embraces charges against the education fund as disclosed in the record in his department relating to the board of education. If such requisition be found correct there remains but one duty on the part of the comptroller, viz, to draw the necessary warrant for the payment of the salaries, etc. He is powerless to exercise a power of audit conferred on the board of education. We cannot ascribe to the Legislature an intention to provide for two several boards of audit. The language used in subdivision 7 was applicable only to the procedure to be adopted by the board of education that in the disbursement of its funds it shall adopt the procedure prevailing in the case of claims against the city, require as it did in the case at bar presentation of the claim, proofs in support of the validity of the same, the extent and value of the labor and material and generally all information obtainable relating thereto before any allowance or audit of the same shall be made. Had relator in the first instance filed its claim with the comptroller, as is asserted it should have done, and the comptroller audited the same for a stated amount and drawn a warrant for the same on the city treasurer, the latter officer could not pay the same save by a violation of the provision of the Education Law, which prohibits the treasurer from making payment from the school fund except on audit of the board of education."

It is regrettable, to say the least, that the possibility for such controversies should exist and that if existing, the issues should have been raised. It is equally regrettable that it should have been necessary for the parties to such disputes to have recourse to the courts, to the Regents and to the State Commissioner of Education, because whichever side was favored in the decisions, the litigation, confusion and consequent irritation must necessarily react on the children whose education is suffering from the disagreement between school and city authorities. So far as the wording of the statutes affords an excuse for such conditions the statutes should be amended and the excuse removed.

This decision of the Court of Appeals lends judicial sanction to the suggestion that the dual control over school moneys heretofore exercised or claimed be ended, by specifically excluding the municipal authorities from any control over school funds.

4. *Failure to Concentrate in Clear and Unmistakable Language Full Responsibility for the Proper Administration of the Public School System Either on the Municipal Authorities, the Board of Education or the State of New York*

The evidence to support this interpretation is adequately set forth under the two sub-divisions immediately preceding. It is only necessary to add here that if the State is to assume full responsibility for the proper administration of the New York City school system it should enunciate that fact in clear terms and should specifically repeal those sections of the charter and other local laws in conflict with that theory.

5. *Limitation of the Powers of the Board of Education*

This point has been touched upon under sub-division 2 above. The powers of the present Board of Education are demonstrably far inferior to those of its predecessor. It cannot be successfully argued that the powers of a Board of Education should be limited in favor of one of its subordinates, or that if local control is desirable the Board should be unable to modify or dispense with two powerful agencies nominally subordinate to it, viz., the Board of Superintendents and the Bureau of Compulsory Education. The State Education Law in so far as it applies to the City of New York clearly curtails the power of the Board of Education. It does not seem that the experience of the past four years indicates that this was a wise provision. So long as responsibility and authority are not entrusted to the same hands there is encouragement for an evasion of obligation and a shifting of blame for non-performance. And in all cases of this character the ultimate sufferers are the children for whose benefit Boards of Education, Boards of Superintendents and school officers are supposedly created.

6. *Great Increase in the Powers of the Superintendent of Schools*

This matter has also been discussed at length under sub-division 2 above and it will not be further dealt with here.

7. *Perpetuation of the Board of Superintendents*

The Board of Superintendents is a unique institution. It is an inheritance from the time of consolidation (1898) when it was apparently deemed desirable to carry over into the structure of the Greater City local officers of the Boards of Education of New York and Brooklyn. It survived all the amendments to the

Greater New York charter and was continued in the education law of 1917 as a mandatory institution. But this law while providing a general statute for all cities of the State, established a Board of Superintendents only in the City of New York by the common expedient of creating such a board in "a city having a population of one million or more." It is hard to see why the requirements of a city with a population of over a million should differ so materially from those of a city of under a million. If a proper school administration requires a Board of Superintendents in the one case, why does it not require a Board of Superintendents in the other case? And if a Superintendent and a group of Assistant Superintendents can operate successfully in a city of less than a million, why should it be necessary for a larger city to place its educational administration in the hands of a board of nine persons and to be able to make progress only when a majority of such board can be secured. The opportunity for discussion by a board cannot always be said to accelerate school business. The President of the Board of Education sought to explain the delay of his Board in adopting by-laws by saying that the Board of Superintendents had been considering a draft of by-laws "I guess for a year, perhaps for two years." Examination of the minutes of the Board of Superintendents shows the many discussions and the many references and reports relative to matters which should be settled by prompt executive action. The records show that one of the major contributing factors to the delay which has characterized the provision of additional school facilities is the fact that the Board of Superintendents has to originate the program and approve the layout of the new buildings contemplated therein.

Much time could be saved in the working out of an educational program, and that the management of the schools would be much more efficient, if the Board of Superintendents were abolished as a board, and if the Superintendent of Schools, with a staff of competent Assistant Superintendents, was made the agent of the Board of Education in the carrying out of educational policies.

8. Perpetuation of the Bureau of Compulsory Education, School Census and Child Welfare

Reference has already been made to the provision of law, making mandatory a Bureau of Compulsory Education, School Census and Child Welfare. The State Education Law, passed in 1917, did not single out this bureau for special recognition. It was

left on a parity with the other administrative bureaus of the Board, subject to modification, abolition and consolidation by the Board of Education.

Chapter 612, Laws of 1920, however, added a new section to the State Education Law, placing the Bureau of Compulsory Education in the mandatory class with the Board of Superintendents and the Board of Examiners. This amendment applied only to the City of New York as it was worded to affect "a city having a population of one million or more."

Mandatory legislation of this character affecting only the City of New York, particularly when in the form of amendments to general State acts, should not be passed unless there is a compelling reason in its favor. It is hard to believe that any such compelling reason existed in the case of the statute in question. If the enforcement of the compulsory education law, in the City of New York, requires the organization of a Bureau of Compulsory Education, the Board of Education can be relied upon to establish such a bureau, but if the Board of Education prefers to enforce the compulsory education law through some agency other than a specially constituted bureau, it should be permitted to do so.

It is the prerogative of the State to enact a compulsory education law and to hold Boards of Education responsible for its enforcement. It should be the privilege of the Boards of Education to determine the machinery by which such enforcement is to be carried out, and the Board of Education of New York should have the same privilege in this respect as is enjoyed by the other cities of the State.

9. Conflict between Section 1102 of the Charter, which was not specifically repealed, and the State Education Law, relative to the disposition to be made of the City's share of the State school moneys, the former providing that such money be credited to the City's general fund for the reduction of taxation and the latter that it be credited to the Board of Education.

Reference has been made to this matter under subdivision 3, above. The controversy was resolved in favor of the Board of Education, and at the present time, the proceeds of the State's apportionment to the City of New York are credited to the Board of Education. That the amounts now involved are by no means

inconsiderable is shown by the following table, giving the totals apportioned to New York for the calendar years 1914 to 1922, inclusive:

<i>Year</i>	<i>Amount Apportioned to the City</i>
1914	\$1,923,025 00
1915	2,115,679 73
1916	2,220,730 03
1917	2,414,837 16
1918	2,321,191 13
1919	2,700,657 19
1920	5,025,570 17
1921	16,938,023 85
1922	*18,097,534 51

* Estimated.

10. Increase from 3 mills to 4.9 mills in the amount which the City is required annually to appropriate for the use of the Board of Education.

The State's policy of prescribing a certain minimum tax to be levied for local school purposes long antedates the creation of the Greater City.

The application of this principle to the present City, however, was first made in the Charter, which took effect in 1898, and which prescribed a minimum of 4 mills. By Chapter 43, Laws of 1903, this was reduced to 3 mills, the reduction taking effect in the 1904 budget, a provision contemporaneous with the increase of nearly a billion and a half dollars in the assessed valuation of New York City's real estate, due to a change in the basis of assessment. The figure remained 3 mills until the State Law of 1917 raised it to 4.9 mills.

The 3 mill tax applied to the 1903 valuations yielded, for the purposes of the 1904 budget, \$16,297,250.75, as compared with \$15,428,190.87, which was yielded for the budget of the preceding year by the 4 mill tax on 1902 values, so the decrease in rate really meant an increase of \$870,000 in available funds.

The following table shows the expenditures by the Board of Education from its current funds for school purposes from 1910, through the first six months of 1921, and gives also the 1922

budget appropriation from City and State sources. It shows the tremendous growth that has taken place in the last few years in school costs.

<i>Year</i>	<i>Expenditures.</i>
1910	\$28,456,945 68
1911	28,958,179 29
1912	33,791,974 40
1913	35,481,641 12
1914	38,185,495 90
1915	39,797,960 64
1916	39,708,764 22
1917	41,101,074 41
1918	43,884,893 59
1919	45,490,121 68
1920	66,194,668 04
1921 (first 6 mos.)	44,828,326 69
1922	*88,798,546 81

* Including \$18,097,534.51 from the State.

The first budget affected by the law increasing the minimum provision for school purposes to the yield of a 4.9 mill tax was that for 1918, and the amount appropriated by the City for school purposes in that budget was \$42,501,156.04, the exact amount of the 4.9 mill yield as then computed and the approximate amount required by the Board of Education as indicated by its expenditures at the time. It seems clear, therefore, that the legislature sought to guarantee to the City's school system, an income sufficient to meet its requirements, relying on increases in assessed valuation to provide some money at least for expansion, thus assuring the Board of Education a reasonable degree of financial independence. The 4.9 mill yield, however, has not proved wholly adequate. The legislature in 1919 and 1920 passed laws increasing the statutory minimums for teachers' salaries. These new schedules, when fully effective, increased the salaries of teachers in New York City's schools by about \$30,000,000 a year. According to figures prepared by the Board of Education, the total salary cost for teachers as of December 31, 1919, was \$37,625,157, and the cost as of December 31, 1921, for the same staff is estimated at \$67,947,108.

In order to lighten the financial burden imposed by these mandatory increases, the Legislature undertook to provide a part of the necessary funds and levied a direct tax for educational purposes to supplement the local city taxes.

As shown above, the State funds received by New York from 1914 to 1919, inclusive, averaged annually about \$2,000,000. In 1921, however, by reason of this action by the Legislature, the amount received totals \$16,938,023 85, and the estimate for 1922 is \$18,097,534.51.

But this is not enough to offset the entire additional burden in New York, and, as a result, the schools are again placed in financial dependence on the city authorities. The City's appropriation for 1922 for school purposes is \$70,701,012.30, whereas the 4.9 mill tax on 1921 valuations yields only about \$50,000,000. The Board of Education is therefore dependent on the City for about 30% of its requirements for current running expenses, to say nothing of its requirements for new school buildings, alterations and the like. In this respect, therefore, the situation is no better than it was in 1917, when the Board's budget was \$41,430,447.49, or nearly \$16,000,000 in excess of the mandatory 3-mill tax of \$25,753,057.53.

A most anomalous situation is thus created. The Board of Education, which is recognized as an agent of the State by the new Education Law, is at the mercy financially of the local city authorities, who have it in their power completely to wreck the school system. That this is a power that may be exercised before long is evidenced by two facts.

The requirements of the Board of Education for funds from City sources as set forth in the budget for 1921 amounted to \$77,946,038.77, but because, in spite of a most unusual increase in the assessed valuations for 1921, the Board of Estimate found that it could not appropriate the full amount it desired to for city and county purposes and remain within the 2% constitutional limitation as interpreted by it, it arbitrarily reduced the amount appropriated for the Board of Education to \$50,720,880.83, leaving a deficit of \$27,225,157.94 to be made up during the year. The action of the Legislature in continuing for another year the direct State levy for teachers' salaries made an additional \$7,225,000 available, reducing the deficit to \$20,000,000.

The Board of Estimate undertook to finance this deficit by the issue of special revenue bonds and the transfer of available bal-

ances from other appropriations, but throughout the greater part of 1921, the Board of Education had no assurance, other than the statement of the Board of Estimate, that the necessary funds for the support of the schools would be provided by the city. This first move by the city authorities can be summarized as an arbitrary refusal to appropriate in the annual budget a sufficient sum for school purposes, coupled with the undertaking to make up the deficit from other city sources during the year.

The second fact is of more recent occurrence and it may be summarized as a desire on the part of the city authorities arbitrarily to reduce the budget appropriations for the Board of Education below requirements and to deny responsibility for the deficit, passing it along to the State. This is evidenced by a communication sent by the Comptroller to the Board of Aldermen, on December 2, 1921, calling attention to the fact that the probable tax rate for city and county purposes in two of the five counties would exceed 2%, and that in view of the constitutional provisions, it would be safer to reduce the budget so as to bring the rates below 2%. He recommended that this reduction be effected by taking \$10,000,000 away from the appropriations made for the Board of Education, saying:

“Education is a State function, and because it was a State function the legislature increased teachers’ salaries in the City of New York at the rate of \$31,000,000 per year, but when it came to providing the means wherewith to meet this increased outlay, the legislature did not consider that education was a State function. It passed this liability on to the City of New York, and, in order that a show of economy might be made in the State’s appropriation bills, the amount provided to aid the City of New York to carry this increased budget was less than half of the sum required.

“Unless the State is to be faithless to the cause of education, the legislature can do no less than provide the necessary moneys to sustain the activities in the manner that it has required.”

The significance of this is not so much the speciousness of the argument as the fact that the exigencies of municipal finance have led the city authorities to assume a hostile attitude toward the city schools. The Board of Aldermen wisely rejected the Comptroller’s recommendation, but next year, it may very well be that the Board of Estimate, acting at the Comptroller’s instance, may

refuse to appropriate sufficient funds for the schools, and, as the Board of Aldermen has no power to increase appropriations, there would be no means for compelling the City to make the necessary appropriation, so long as the statutory minimum of 4.9 mills is provided.

In connection with the Comptroller's recommendation, however, mention should be made of the fact that the Mayor testified that he was in favor of the increased salaries for teachers, concerning which the Comptroller complains, that the city's financial condition was and is such that it could not possibly provide the money for these increases had the legislature not come to its aid by imposing a State tax for the purpose and that the amount to be received by the city during 1922, from State school moneys is estimated at about \$4,000,000 more than the amount of the direct State tax which the city has had to include in the 1922 budget, so that the city gets from the State more than it pays by about \$4,000,000.

It seems highly desirable, therefore, that the Legislature take the necessary steps to make it impossible for the City to starve the schools at will. In doing so, however, regard should be had, not only to the current running expenses as reflected in the appropriations to the general and special school funds, but also to the requirements for new school accommodations. Only half of the problem would be solved if the Board of Education were dependent on the City for funds for new buildings, because there is no more reason to assume that the City, when confronted by the constitutional debt limit, would treat the schools any more generously than when confronted with the constitutional limit on taxing power.

The City's appropriation for the Board of Education in the 1922 budget of \$70,701,012.30 represents about 7 mills on the 1921 valuation of about ten billions. An increase in the mandatory minimum from 4.9 mills to 7 mills would therefore insure sufficient funds to conduct the schools at the present rates of expenditure, provided the State continues its distribution of school moneys in the same amount as at present. If, in addition, the equivalent of another mill or fraction thereof were set aside by statute for new school projects, to be provided by taxation or bond issue, the Board of Education would have the assurance of a definite sum annually for such purposes.

The total expenditure from 1910 to the middle of 1921 for new buildings and sites was \$46,092,839.88, making an average annual expenditure of \$4,008,073.03 during this period. This amount has demonstrably been insufficient to keep pace with the growing requirements of the City and it should not be a criterion in determining the funds to be made available by the City in the future for such purposes. On the other hand, the City's financial condition is such that it cannot be expected to make up at once the deficiencies of prior years in school construction. The Board of Education could easily and advantageously spend many more millions than the City could furnish. It is necessary, therefore, to effect a compromise based on the City's financial ability and the requirements of the schools and adequate to give the Board of Education the necessary financial independence.

11. The inclusion within the State's educational system, of City Boards of Education, including the Board of Education of the City of New York and the subordination of the municipal authorities to the State in matters of school administration.

The foregoing discussion demonstrates that the apparent attempt by the new State Law of 1917, to secure this change in the relationship between the City, the Board of Education and the State, was not successful. The present division of responsibility, while differing from the preceding division of responsibility, is none the less embarrassing and is not conducive to the efficient administration of the schools. The history of public education in New York State shows that the State has increasingly concerned itself with the education of its children. Generally speaking, however, its concern has been to see to it that the local authorities fulfilled their responsibilities. The details of school administration were left to communities, while the State prescribed general requirements, supervised the carrying out of these requirements, appropriated money to help meet these requirements and passed laws which sought to guarantee a proper education to its future citizens. Experience seems to show that this is a wise position for the State. It cannot successfully and should not centralize in its own hands the administrative control of local schools. It can, however, exercise general supervision, establish minimum requirements, set up local agencies to administer the affairs of local schools, and see to it that these agencies are not interfered with

in the performance of their duty. Education is not a State function, it is a State responsibility. The guaranteeing that every child in every community shall have an opportunity for education, however, is a State function and so is the exercise of compulsion on local communities to provide adequate educational facilities.

The State can enunciate that principle and it can establish in New York City a Board of Education with complete financial independence, subject to restrictions imposed by the State and the State only. The City can be compelled to furnish the necessary funds, but in the interests of the taxpayer these funds must be provided out of the 2 per cent tax which the City may, under the constitution, levy for city and county purposes.

DEVELOPMENT OF PUBLIC EDUCATION IN THE STATE AND CITY OF NEW YORK PRIOR TO 1897.*

HISTORICAL DEVELOPMENT OF THE EDUCATIONAL SECTION OF THE STATE CONSTITUTION

Article IX, section 1 of the Constitution of the State of New York reads as follows:

“The Legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this State may be educated.”

This section was added to the Constitution by the Constitutional Convention of 1894 upon the recommendation of the Committee on Education which reported an educational article of which the foregoing was the first section. The Committee's report contained the following statement:

“The present Constitution is silent upon the vital point of the establishment and maintenance of a system of free common schools. It may be urged that no imagination can picture this State refusing to provide education for its children, and for this reason the declaration which your committee have reported in section 1 might, no doubt, be omitted without endangering the stability of our present system of education. But the same reasoning would apply to many other matters though fundamental; and it is a significant fact that within the last half century of constitutional revision no other State of the Union has considered it superfluous or unwise to make such an affirmation in its fundamental law.

*Most of the historical material presented here has been taken from Lincoln's "Constitutional History of New York," vol. III, pp. 475-580, and from Palmer's "The New York Public School." In many instances sentences have been borrowed bodily, and, generally speaking, there has been little more than summarization and rearrangement of the material collected by these authors. Material has also been taken from the School Inquiry Report published in 1913 by the Board of Estimate, especially from vol. III, pp. 45-108.

Your committee, therefore, recommends the adoption of section 1 as an explicit direction to the legislature to provide for a system of free common schools wherein all the children of this state may be educated. This requires, not simply schools, but a system; not merely that they shall be common, but free, and not only that they shall be numerous, but that they shall be sufficient in number, so that all the children of the state may, unless otherwise provided for, receive in them their education. No desire to confine the new Constitution to the narrowest possible limits of space should prevent the adoption of an enactment declaring in the strongest possible terms the interest of the state in its common schools. Whatever may have been their value heretofore, and language has been strained to the utmost in applying to them terms of praise, their importance for the future cannot be overestimated. The public problems confronting the rising generation will demand accurate knowledge and the highest development of reasoning power more than ever before; and, in view of the state's policy as to higher education, to which reference will presently be made, too much attention cannot be called to the fact that the highest leadership is impossible without intelligent following, and that the foundation of our educational system must be permanent, broad, and firm if the superstructure is to be of real value."

The Constitutional Convention of 1894 found an educational system in two parts, one culminating in the University Law of 1892 and the other in the Common School Law of 1894. In addition, there were numerous independent statutes relating to both departments of education. The Convention combined both branches in one educational article and the state electorate by adopting the revised constitution definitely declared that elementary, secondary and higher education should be maintained at public expense within limitations prescribed by the State Legislature. By this action there was incorporated in the fundamental law of the State a policy which, as a matter of fact, had existed for many years through legislation. The constitutional provision unified the two systems above referred to, but both systems were prior to 1894 subject to State control.

The following brief sketch of the development of a public educational policy in the State of New York shows the gradual formation of a new conception that public education was a vital concern of the State.

Dutch Colonial Period

The Dutch were firm believers in education and carried to the new world their determination to provide for the instruction of their youth. An official school and school master were provided in New Amsterdam as early as 1633. During the Dutch control of New York the expense of maintaining the schools was sometimes paid in part from the treasury of the Dutch West India Company, sometimes from excise moneys, sometimes, apparently, by general tax and, in addition, teachers derived a part of their income from direct payment by pupils. Religious and secular instruction were combined in the same course and the same person was often both minister and school master. The Dutch West India Company began the administration of the colony which it was permitted to establish in America by invoking the direct aid of the minister and the school master. A union of church and state was not then deemed objectionable. But while the government through the church and sometimes by direct taxation encouraged the formation of schools, it did not consider itself responsible for the development of a consistent and comprehensive educational policy for the children of the colony.

English Colonial Period, 1664 — 1776

The transfer of New York from Dutch to English control in 1664 had little immediate effect on the educational policy of the colony. The Dutch policy was not interrupted, but as the English apparently did not regard education as an essential subject of public administration, little was done to foster schools at public expense. English teachers were licensed to teach schools, but usually without public aid. The colonial government acting under orders from the crown tried to keep the control of education as a prerogative of the Church of England, and, accordingly, under the instructions of colonial governors school masters were permitted to teach only if licensed, first by the Archbishop of Canterbury and later in the history of the colony by the Bishop of London. During the first few years of English jurisdiction school masters were also required to obtain a civil license from the governor, but this practice later fell into disuse. Education, while not discouraged by the government, was left largely to private enterprise, but under public control, and the schools were maintained either directly or indirectly by private contributions including the direct payment of tuition and the funds admini-

istered by some society organized for that or similar purposes. The English "Society for the Propagation of the Gospel in Foreign Parts," for example, carried on an extensive educational work in the colony, establishing schools, appointing teachers and often supporting them out of its own treasury. But while the schools were, during the latter half of the English Colonial period under the general care and supervision of this Society, the government kept its hand on the school system directly and through the instrumentality of the church by the requirements as to the licensing of teachers referred to above, and not by direct legislation of a general character.

Only two statutes were enacted by the English Colonial government of New York relating directly to education and neither of these disclosed any intention to establish a public school system. The first was passed in 1702 and recited that the municipal authorities of New York had represented to the general assembly the importance of establishing in that city a free school. The assembly thereupon made provision for a grammar school and directed that an annual tax of £50 be raised to maintain the school. The act was to continue in force seven years. It was not then extended. The second statute was passed in 1732 and authorized a school in New York for the teaching of Latin, Greek and mathematics. This school was to be free, its expenses being paid from moneys received from licenses to hawkers and peddlers. The act was limited to five years. It was then continued for another year, but was not again renewed. This seems to have been the last attempt to establish public schools during the Colonial period.

Education under the First Constitution, 1777 — 1821

Education was given no place in the first constitution. The Legislature was, therefore, left free to act as it saw fit with respect to schools. The Revolutionary War, of course, absorbed much if not most of the Legislature's energy and the first definite recognition of school needs was tacked on to an act providing for the raising of two regiments for volunteer service and for bounties of public land to encourage enlistments. By this act (Chapter 32, Laws of 1781) the State reserved in each township five hundred acres of public land for the support of the gospel and three hundred and sixty acres for the use of the school. The policy of appropriating public lands for these purposes was continued by subsequent legislation, and, according to a report by

the Superintendent of Public Schools in 1839, there had been thus reserved up to that time as gospel and school lands 47,620 acres. This policy obviously was not applicable to all parts of the State and necessarily could have only a limited effect. It was only an incident in the State's educational development.

What is said to be the earliest official declaration of a state educational program is found in a statement by Governor George Clinton to the special session of the Legislature called in 1782 to devise means for more vigorous prosecution of the war. He is quoted as having said:

“ * * * it is the peculiar duty of a government of a free state where the highest employments are open to citizens of every rank to endeavor by the establishment of schools and seminaries to diffuse that degree of literature which is necessary to the due discharge of public trusts. You must be sensible that the war has occasioned a chasm in education extremely injurious to the rising generation, and this affords an additional consideration for extending our earliest care to their instruction.”

In 1784 the Governor repeated his views and the Legislature passed an act to establish a university under a Board of Regents. If this university had been erected on a broad foundation without reference to any particular institution then existing, it could have supervised all education, but the intervention of Kings College brought about amendments which concentrated on Columbia College (the later name for King's College) the energies of friends of education in the State. This law of 1784 was amended, materially altered in 1787 and in the latter form was the basis of the University Law of 1892.

The Committee of Regents which recommended the modification of 1787 in the University Law made the first direct reference to public common schools as such, stating that:

“ They feel themselves bound in faithfulness to add that the erecting of public schools for teaching reading, writing and arithmetic is an object of very great importance which ought not to be left to the discretion of private men, but be promoted by public authority.”

The amended law, however, contained no provision for the organization of primary education.

The first free common school established by statute in a settled portion of the State was provided for by Chapter 41 of the Laws

of 1791. The people of Clermont asked authorization from the Legislature for the use for school purposes of the surplus of excise moneys not needed for the support of the poor, and this authority was granted by the above-mentioned act.

In 1793, 1794 and 1795 the Regents repeated their recommendation for the establishment of public schools for the teaching of reading, writing and arithmetic, and the Legislature in 1795 passed a Common School Law (Chapter 75) which appropriated £20,000 annually for five years and required each city and county to raise by tax a sum equal to one-half the amount apportioned to it by the State. These two sums constituted the local school fund. There was no rate bill. This law expired in 1800 and was not renewed. The Legislature of 1801, however, provided for a lottery to raise \$100,000, one-half of which was to be used by the Regents and the other half to be used for the support of the common schools as the Legislature might direct.

In 1802, 1803 and 1804 the Governor recommended again that the Legislature continue the system of common schools. In 1805 Governor Lewis sent a special message to the Legislature urging the adoption of a liberal policy toward education and recommending that 1,500,000 acres of unappropriated land then owned by the State be devoted to educational purposes; the funds realized from the sale thereof to be placed under the supervision of the Regents; the interest to be used for the support of colleges, common schools and "perhaps of academies." This plan, if adopted, would have unified the State's educational system under one head, the Regents. The Legislature, however, included in the new law only that part of the plan relating to a common school fund and set aside only 500,000 acres of unoccupied land for establishing the common school fund. The creation of this fund was, apparently, the only result of Governor Lewis' plan to establish a general system of education.

In 1810, and again in 1811, Governor Tompkins urged legislative action for popular education, and in the latter year the Legislature appointed a commission to study the subject and report. The report was submitted in 1812 accompanied by a bill which, with modifications, became Chapter 242. This law provided for a Superintendent of Common Schools, for the distribution of the interest of the common school fund; authorized the election of town commissioners and inspectors of schools; required teachers to be examined and licensed by the inspectors; provided for school districts in towns, and required a local tax

for school moneys in addition to the fund distributed by the State with the limitation that the offer of State aid must have been accepted at a town meeting, in which case a sum equal to the State apportionment was to be raised by a town tax. The town might also raise an additional sum. These amounts constituted the local school fund. There was no rate bill. This act was revised and repealed in 1814. By the new act the towns were required to raise by tax an amount at least as great as the amount of the State apportionment, and provision was made for the rate bill which was used to collect money for teachers' salaries in excess of the amount of the local school fund. The rate bill was continued in the revision effected by Chapter 161, Laws of 1819. The office of Superintendent of Common Schools was abolished by Chapter 240, Laws of 1821, and his functions transferred to the office of the Secretary of State.

Education under the Second Constitution, 1822-1846

The Constitutional Convention of 1821 gave but little attention to the subject of education. The common school fund was protected and was made perpetual. Its foundation was enlarged to include the proceeds of all the State lands not otherwise appropriated. Except for these provisions, however, the new constitution contained no educational material, but during its life considerable legislation on this subject was enacted, much of it having to do with the training of teachers. By Chapter 133 of the Laws of 1843 the Legislature abolished the offices of Commissioner and Inspector of Common Schools and created the office of Town Superintendent of Schools, to be chosen annually by the people. The same law authorized the State Superintendent to issue teachers' certificates which could be used anywhere in the State and were valid until revoked. This act completed the policy of supervision by Superintendents, including the State Superintendent, Deputy County Superintendents and Town Superintendents.

Prior to 1846 several separate free school laws were enacted. But, as a general rule, parents were required to pay a separate and additional tax (rate bill) for the instruction of their children, if the public money was not sufficient to pay teachers' wages. Poor people might, however, be relieved from this additional charge.

A resolution was offered in the Assembly of 1846 requesting the Committee on Colleges, Academies and Common Schools to

report on the expediency of providing free schools in all cities and also in all incorporated villages with a population of 10,000 or more. The Committee reported itself in favor of the idea but advised postponing action until the Constitutional Convention then about to meet could consider the matter.

Education under the Third Constitution, 1847-1894

The Constitutional Convention in 1846 considered the matter of free public education and on the day before adjournment adopted two sections to be submitted to the people separately and not as part of the Constitution. One section read:

“The Legislature shall provide for the free education and instruction of every child in the state in the common schools now established or which hereafter shall be established therein.”

The other section related to taxation. These two sections, however, were reconsidered by the Convention later in the same day and the earlier action reversed. The Convention struck out the free school provisions by a vote of 61 to 27.

Numerous petitions were submitted to the Legislature of 1849 for a general free school law. The Legislature responded and enacted a law providing that:

“Common schools in the several school districts in this state shall be free to all persons residing in the district over five and under twenty-one years of age” and that “free and gratuitous education shall be given to each pupil” in all public schools.

A free school law was such a radical departure from the existing policy of the State, however, that the Legislature decided to submit this new law to the electors. It was approved by them at the November, 1849, election by a vote of 249,872 to 91,951 and became effective January 1, 1850. The constitutionality of the law was attacked because of the provision requiring its submission to the people before becoming effective, and in 1853 the Court of Appeals held it to be unconstitutional (8 N. Y. 483).

This decision had little practical effect because the law had been repealed in 1851, many complaints having been made of the oppressive tax burden on account of free schools. Chapter 151 of the Laws of 1851 was enacted to provide relief and restored the rate bill. In 1855 Governor Clark recommended that the rate bill be abolished and that schools be made entirely free, but the

revised school law of 1864 (Chapter 555) continued it in force. In 1867 Governor Fenton made a similar recommendation and the Legislature by Chapter 406 did abolish all rate bills, thus making the schools really free.

In 1853 (Chapter 433) the Legislature sought to encourage the establishment of schools by providing for the union of two or more districts, or parts of districts, in one school under the immediate supervision of a Board of Education. These union free schools, while in their general character common schools, might have an academic department. Thus there was a union of common and academic education in the same school. The academic department was, however, under the general supervision of the Regents. In other respects the Board of Education had the "superintendence, management and control of the school." This law did not specifically give the Superintendent of Common Schools any supervision over a union school but laws relating to the powers and duties of trustees of common schools were made applicable to boards of education.

The Superintendent of Public Instruction whose office was created by Chapter 97 of the Laws of 1854 was practically the successor of the former Superintendent of Common Schools. He was specifically required to

"visit as often as may be practicable such and so many of the common schools, academies and other literary institutions of the state as he may deem expedient; to inquire into the course of instruction, management and discipline of such institutions, and to report the results of such visitation and inspection annually to the Legislature, with such recommendations and suggestions as he may deem suitable."

In 1856 Governor Clark recommended the abolition of the office of Town Superintendent and the creation of local Boards of Education. He also urged the more thorough supervision of schools, and the Legislature, by Chapter 179 of the Laws of 1856, created the office of School Commissioner in each assembly district except in the counties of New York and Kings, to whom was given the general power of visitation, inspection and supervision of common schools in his district. He was also authorized to grant teachers' licenses and to hold teachers' institutes subject to rules prescribed by the state superintendent. The same act abolished the office of Town Superintendent of Common Schools.

By Chapter 555 of the Laws of 1864 the general acts relating to public instruction were revised and consolidated. Union schools were made subject to the visitation of the Superintendent of Public Instruction, who was also made responsible for the "general supervision of its board of education and their management and the conduct of all its departments of instruction." The Superintendent was also empowered to remove members of a Board of Education. As a result, a double supervision was established for union schools with academic departments, the Superintendent being one of the instruments and the Board of Regents the other. And, similarly, there was a double inspection and distribution of State funds. This duplication of function continued until the unification act of 1904.

The Convention of 1867 included a free school provision in its draft of the Constitution. The Commission of 1872 considered but did not adopt propositions relating to compulsory education and free common school instruction. The Legislature of 1876 passed a free school amendment to the Constitution, but it was not agreed to by a subsequent Legislature and was not, therefore, submitted to the people for acceptance. Not until 1894 were effective steps taken toward the inclusion of a free education section in the state constitution. The constitutional convention of that year adopted the section quoted at the beginning of this sketch and that section has remained ever since as a part of the state constitution.

Summary

The foregoing summary of the development of constitutional free public education in New York shows clearly that the process was not a consistent one. The present system is an outgrowth of a variety of conflicting ideas and tendencies. Most of the progress has been of comparatively recent years.

The Dutch Colonists had a lively regard for the value of education, but it was not free state education. It was church education sanctioned and encouraged by the state. The English Colonists had no conception of free public education. There were no public schools at the end of the colonial period. The general policy was to leave education to individual effort. The government felt itself absolved from responsibility. If the people desired schools they could have them by paying for them. The church would license proper teachers and the schools could be supported by private contributions.

This was the educational inheritance of the new State. The first education law passed by the new state government had to do with the establishment of a state university. There was no recognition of any need for state common schools. The evident purpose of the first University Law was to establish a private educational institution and not to institute a comprehensive system of public education. The differentiation between the two ideas is shown by the fact that when the Legislature passed the first Common School Law (1795) the Regents of the state university were not made the instrumentality for administering the new law. The university had to do with private educational institutions while the state government was then about to try an experiment in public education. The Legislature, accordingly, left the university at one side and used means with which they were familiar, namely, the township governments. Township government was a colonial inheritance and was recognized and perpetuated by the first constitution of the State, which guaranteed to the people of the town the right to elect their own officers. The towns themselves had an organized government and it was natural that the State should resort to these local governments for the machinery to carry out the new plan. It is also probable that the New England township school policy had an influence in shaping the New York statute. Massachusetts in 1789, six years before the New York law, had enacted a common school law by which each town was directed to maintain public schools. There was no central administration at all, the whole subject, including taxation, being committed to the people of the town, who might subdivide the town into school districts. The New York law was constructed on this model. The town was made the basis of school administration and taxation, and local officers were made responsible for the enforcement of the law. The New York statute was strikingly different in one respect, however, in that the state contributed funds from its treasury for the support of local schools, while in Massachusetts the schools were maintained wholly at local expense. In neither State was there any central state supervision.

A speech by Governor Clinton in 1802 indicates that the first Common School Law was a failure. The revival of the common school plan in 1812 included the idea of local supervision but added the element of state supervision by a Superintendent of Common Schools. The duties of this office were transferred to the

Secretary of State in 1821, who administered them until 1854 when the office of State Superintendent of Public Instruction was created. Since 1812 the State has maintained an unbroken policy of supervising public schools through one state officer or another.

The growth of educational policy in the state of New York was rapid in the latter part of the nineteenth century. The State increasingly assumed responsibility for the education of its citizens. Years before the adoption of the educational section of the Constitution of 1894 the Legislature was exercising its rights with respect to public education, and this gradual development of the idea of state control over this matter became crystallized in the fundamental law of the state as Article IX of the Constitution of 1894.

THE EVOLUTION OF PUBLIC EDUCATION IN THE PRESENT CITY OF NEW YORK

Up to 1898 when the Greater New York Charter (Chapter 378 of the Laws of 1897) became effective, the history of education in what is now the City of New York was the history of the several independent communities which, by consolidation at that time, or by earlier consolidation with the constituent municipalities, became the Greater City. Before treating of the development subsequent to 1898, therefore, there will be outlined the growth of a public educational system in the former City of New York, in the City of Brooklyn and very briefly in what are now the other two boroughs. These sketches should afford a sufficiently clear picture of the experimental and inconsistent character of the legislative and other provisions through which the present city's educational system was developed.

The earliest history of education in the territory now contained within the City of New York is little different from the general history of the State. Up to the Revolutionary War and for some years thereafter there is nothing of great significance to differentiate the treatment accorded to schools in the City from that accorded to schools outside the City. But early in the nineteenth century the individual school history of the City began, and it is at that time that the following outline commences.

The Former City of New York

In 1805 there was a new and strictly local development in educational policy in the shape of the formation of a society incorporated by the Legislature under an act entitled "To Incor-

porate the Society Instituted in the City of New York for the Establishment of a Free School for the Education of Poor Children who do not Belong to or Are not Provided for by any Religious Society."

The school opened by this Society in 1806 with funds provided by private subscription marked the beginning of what in later years became the public school system of the City. It soon became evident that this first school must be followed by others, and in 1807 the Society obtained an appropriation from the Legislature and also assistance from the municipal authorities to enable it to furnish additional educational facilities. These early schools were, however, of a strictly eleemosynary character.

In 1808 the Society's name was changed by the Legislature to "The Free School Society of New York" and its powers were extended to cover "all children who are the proper objects of a gratuitous education." The first apportionment of the State common school fund established in 1805 was made in 1815 and the Free School Society then received \$3,708.14 as its share of the amount paid to the City and County of New York. Under the Act of 1813 permitting the city to participate in the common school fund, the City's portion was paid to the Free School Society, the Orphan Asylum Society, the Society of the Economical School in the City of New York, the African Free School and to such "incorporated religious societies in said City as now support or hereafter shall establish charity schools within the said City who may apply for the same." The State funds thus apportioned were dedicated solely to the payment of teachers' salaries.

In 1817, however, the Free School Society, finding that the Lancasterian system was so economical that the State moneys were more than enough for teachers' salaries, secured permission from the Legislature to apply the surplus to the erection of buildings or any other needful purpose. In 1822 the Bethel Baptist Church, which participated in the common school fund under the law of 1813, secured a similar dispensation from the Legislature. Considerable alarm was felt by the Free School Society and by the other church schools lest this lead to a perversion of State school funds to sectarian rather than to school purposes. Repeated attempts were made to have the Legislature repeal the exemption made in favor of the Bethel Baptist Church, but without success. The scene of the controversy was moved from Albany to New York by the passage of a law in 1824 placing the distribution

of the school fund for New York City in the hands of the Common Council. In 1825 the Common Council passed an ordinance excluding all religious societies from participation in the income from the common school fund, leaving only the Free School Society, the Mechanics' Society, the Orphan Asylum Society and the African Free Schools as beneficiaries.

The Free School Society was eager to extend the field of its operations and in 1824 suggested that its schools which had suffered from the stigma that they were charity schools should also receive as pupils children of parents able and willing to pay small sums for instruction. In 1826 the Legislature granted a new charter whereby the Society's name was changed to "The Public School Society of New York," whereby the Society was permitted to charge a moderate fee for instruction, provided that no child be denied the benefits of education because unable to pay (this pay system proved unsuccessful and was abolished in 1832), and whereby the Society was authorized

"to convey their school edifices and other real estate to the Mayor, Aldermen and Commonalty of the City of New York, upon such terms and conditions and in such forms as shall be agreed upon between the parties, taking back from the said corporation a perpetual lease thereof upon condition that the same shall be exclusively and perpetually applied to the purposes of education."

The Society was not satisfied with the adequacy of the system of schools existing in 1828. It estimated that 12,000 children between five and twelve years of age were entirely without means of instruction and it stated that the principle which had led to the recent change from free schools to public schools should be extended so that schools "should be supported from public revenue, should be public property, and should be open to all, not as a charity but as a matter of common right." The specific recommendation was then made that a tax be levied of half a mill upon the dollar of assessed city property, and a vigorous effort was made to arouse public sentiment in favor of this tax measure, the result being the enactment by the Legislature in 1829 of a tax law levying a local tax of one-eightieth of one per cent.

A controversy as to the application of public school moneys to the support of schools under the control of religious societies commenced in 1840 and had far-reaching consequences. The Roman Catholic churches which maintained free schools requested from

the Common Council a share of the school moneys. Similar requests were made by a Hebrew congregation and by the Scotch Presbyterian church. They were all strenuously opposed by the Public School Society and were denied by the Board of Assistant Aldermen. The Catholics then petitioned the Board of Aldermen, which after a public hearing on the matter, denied the request.

The Legislature was the next point of attack and lengthy memorials were submitted by the proponents and opponents of the plan. All of these documents were referred to John C. Spencer, the Secretary of State and ex-officio state Superintendent of Common Schools. Mr. Spencer studied the entire problem and then outlined a plan of education in New York City providing for the election of a Commissioner of Common Schools in each ward; for the extension of the general school laws of the State to the City, with certain modifications; for the transfer to the elected Commissioners of "the schools of the Public School Society and the schools of the other associations and asylums now receiving the public money as schools under their general jurisdiction, leaving the immediate government and management of them to their respective trustees and directors"; for the establishment, by the Commissioners, of schools in other parts of the city as district schools, and for the payment of the public school money by the Chamberlain directly to the Commissioners. The Legislature postponed action until January, 1842, and the school question became an important issue in the city campaign.

In his annual message for 1842 Governor Seward gave considerable space to the school problem in New York City, saying among other things:

"Happily in this, as in other instances, the evil is discovered to have had its origin no deeper than in a departure from the equality of general laws. In our general system of common schools, trustees chosen by tax-paying citizens, levy taxes, build school-houses, employ and pay teachers, and govern schools which are subject to visitation by similarly elected inspectors, who certify the qualifications of teachers and all schools thus constituted participate in just proportion in the public moneys, which are conveyed to them by commissioners also elected by the people. . . . In the public school system of the city, one hundred persons are trustees and inspectors, and, by continued consent of the

Common Council, are the dispensers of an annual average sum of \$35,000, received from the Common School Fund of the State, and also of a sum equal to \$95,000, derived from an indiscriminating tax upon the real and personal estates of the City. They build school-houses, chiefly with public funds and appoint and remove teachers, fix their compensation, and prescribe the moral, intellectual, and religious instruction which one-eighth of the rising generation of the State shall be required to receive. Their powers, more effective and far-reaching than are exercised by the municipality of the City, are not derived from the community whose children are educated and whose property is taxed, nor even from the State, which is so great an almoner, and whose welfare is so deeply concerned, but from an incorporated and perpetual association, which grants, upon pecuniary subscription, the privileges even of life membership, and yet holds in fee simple the public-school edifices, valued at eight hundred thousand dollars. Lest there might be too much responsibility, even to the association, that body can elect only one-half of the trustees, and those thus selected appoint their fifty associates. The philanthropy and patriotism of the present managers of the public schools, and their efficiency in imparting instruction, are cheerfully and gratefully admitted. Nor is it necessary to maintain that agents thus selected will become unfaithful, or that a system that so jealously excludes popular interference must necessarily be unequal in its operation. It is only insisted that the institution, after a fair and sufficient trial, has failed to gain that broad confidence reposed in the general system of the State, and indispensable to every scheme of universal education. . . . I submit, therefore, with entire willingness to approve whatever adequate remedy you may propose, the expediency of restoring to the people of the City of New York—what I am sure the people of no other part of the State would, upon any consideration, relinquish—the education of their children. For this purpose, it is only necessary to vest the control of the common schools in a board to be composed of commissioners elected by the people; which board shall apportion the school moneys among all the schools, including those now existing, which shall be organized and conducted in conformity to its general regulations and the laws of the State, in the proportion of the number of pupils instructed.

It is not left doubtful that the restoration, to the common schools of the City, of this simple and equal feature of the common schools of the State, would remove every complaint, . . .”

By chapter 150, Laws of 1842, entitled “An act to extend to the City and county of New York the provisions of the general act in relation to common schools” the Legislature established the first Board of Education for the City. The statute provided that there should be elected in each ward at special elections held in June, two Commissioners of Common Schools, two Inspectors of Common Schools and five Trustees of Common Schools. The Commissioners were to constitute a Board of Education. The Board had very little power, however. Its importance can be measured by the fact that the law required it to meet at least once in three months. The real authority was vested in the ward officers. Under the statute each ward was to be considered as a town for the purposes of school administration; the ward trustees initiated new school projects and these projects, if approved by the respective inspectors and commissioners, became binding on the city. The supervisors of the city and county were required to raise annually by tax a sum equal to the amount of the State apportionment of school moneys, plus a special tax of one-twentieth of one per cent of the total assessed valuation, plus such further amount as was necessary. The Board of Education distributed the school moneys among the wards on the basis of average attendance, and the ward officers had charge of the expenditure of the funds. The schools of the Public School Society and those of other incorporated societies were continued under the management of their respective trustees. It was further provided that no school should receive any portion of the school moneys in which “any religious sectarian doctrine or tenet shall be taught, inculcated or practiced.”

This act proved unsatisfactory and was, therefore, amended in 1843 and 1844. By chapter 320, Laws of 1844, passed May 7, 1844, the same school officers were provided for as in the first act, but with a transfer of powers from the ward officers to the central Board of Education. New school projects deemed desirable by the ward officers had to be submitted to the Board of Education for approval before they became effective, with the provision that appeals from the Board's decision could be made to the State Superintendent of Common Schools whose determination was binding for one year. A form of local supervision was

also established under this act in that it authorized the Board of Supervisors to appoint a County Superintendent of Common Schools for a two-year term. The compensation of this officer was fixed at \$2.00 a day and necessary expenses. The schools established under the Acts of 1842, 1843 and 1844 were designated as ward schools.

But the double system of schools and of public and private school control was not a happy one. There was friction between the Board of Education and the Public School Society and in 1846 the Board questioned the Society's right to erect new school-houses. A hearing was held and the Board decided that since the Act of 1844 the Society had had no such right. The Society appealed to the Legislature which in 1848 passed a law legalizing those schools which the Society had established since May 7, 1844, but providing that it should establish no others without the consent of the Board of Education.

In 1851 the Legislature passed an act (Chapter 386) "to amend, consolidate and reduce to one act the various acts relative to the common schools of the City of New York." By this act the powers of the Board of Education were materially enlarged; school funds were deposited in the city treasury and withdrawn by the Board as a whole instead of being handled by the separate commissioners. The Board was given authority to make rules and regulations to secure economy and accountability and was authorized to appoint a City Superintendent of Schools, Assistant Superintendents and a Superintendent of School Buildings. For the past ten years there had been a County Superintendent of Schools elected by the Board of Supervisors, but he was not directly amenable to the Board of Education. The City Superintendent was now empowered to visit schools, inquire into all matters pertaining to the administration thereof and to advise with the trustees. The same school officers were continued but their terms of office were adjusted to a change made by an earlier statute, whereby the special June elections were abolished and provision made for the election of school officers at the general elections. The school system was really established on a pretty independent basis by this law. One very significant provision required the City to raise annually by tax not only the equivalent of the State apportionment as prescribed by the general State law, and not only one-twentieth of one percent on the assessed valuations as prescribed by another special statute, but also "such

additional sums as the Board of Education * * * shall have reported to be necessary."

In 1853 the Legislature ended the dual control of the City's public schools by joining the schools of the Public School Society and those of the Board of Education and providing for the transfer to the City of all the property of the Public School Society. The same law provided for the appointment by the Society from among its trustees of fifteen commissioners of common schools to hold office until January 1, 1855, and also for three trustees of common schools "for each ward of said City in which one or more of the schools of said Society are now established" to serve until the first of January, 1855, 1856 and 1857, respectively, and for the merging of its schools into the system of common schools established by law. In 1853, therefore, the Board of Education consisted of 59 members, two commissioners from each of the 22 wards and the 15 representatives of the Public School Society. The latter remained in office until January 1, 1855, when the number of commissioners again became 44. The law also limited to \$4.00 per pupil the amount which the Board of Education could require annually from the City in addition to the equivalent of the State apportionment and to the yield of the special tax of one-twentieth of one per cent.

Nine years later, in 1864, an act was passed establishing seven school districts in the City of New York and reducing the Board of Education from 44 members elected by wards to 21 members elected by districts, each district to elect one commissioner of common schools each year. The new law also reduced the number of trustees elected in each ward from eight to five, provided for three inspectors in each of the seven districts to be named by the Mayor subject to confirmation by the Board of Education. The power of appointing teachers and janitors was retained by the trustees, but nominations of principals and vice-principals made by the trustees were subject to approval by the Board of Education, and the Board was also given authority in the matter of the removal of teachers.

A measure was introduced in the Legislature of 1867 which, although it failed of passage, deserves mention at the present juncture. It provided for the abolition of the Board of Education, the trustees and the inspectors and created a commission of seven, termed the Metropolitan Board of Instruction, and appointed by the Governor and the Senate. This was to be a paid board and its members were to hold office for eight years.

In 1869 the Legislature passed an act providing for a Board of Education of twelve members who were to be appointed by the mayor and to serve until December 31, 1871. It was further provided that at the general election of 1871 twelve Commissioners of Common Schools should be voted for on a general ticket, recognition being given to the principle of minority representation. This law was repealed in 1870, so that the election provided for was never held.

The Act of 1870 "to reorganize the local government of the City of New York" was amended in 1871 by Chapter 574, which created a Department of Public Instruction as one of the departments of the city government, and turned over to it all the powers and duties of the Board of Education. The existing Board was legislated out of office and provision made for the appointment by the Mayor of twelve commissioners for terms of five years, recognition being given to the principle of minority representation. The Mayor was also authorized to appoint the school trustees and inspectors. This law did away with the machinery of ward and district representation and created a centralized school system under the Mayor.

But this new arrangement did not last. By Chapter 112 of the Laws of 1873 the seven school districts set up by the law of 1864 were re-established, and provision was made for the appointment by the Mayor of a Board of Education consisting of twenty-one Commissioners of Common Schools whose terms were for three years. This Board was empowered to appoint five trustees for each ward for five year terms and the Mayor was authorized to appoint twenty-one inspectors, three from each district. This system remained substantially unchanged until 1896. Its advantages were said to be the removal of the schools from political supervision, the provision of moderate local control by the trustees, and the establishment of centralized supervision and final control by the Board of Education without placing a dangerously great authority in the hands of the central Board.

The next important modification of the administrative machinery of the school system was the abolition by Chapter 387 of the Laws of 1896 of the ward trustees. These officers had persisted since 1842 and had exercised many important powers. For many years they were elected and, under the short-lived act of 1871, they were appointed by the mayor. After 1873 they were appointed by the Board of Education. The trustees were often

attacked by persons interested in the welfare of the schools. It was claimed that some of them were illiterate; that they were appointed for political purposes; that they considered the appointment of teachers as legitimate patronage and that they showed favoritism in promotion and in the selection of contractors. A telling argument against the ward trustee system was that it was absurd to use the ward as a basis of selection, as some wards had very few schools while other wards had many. In 1888, in the second ward, for example, there was only one school with but two teachers, while in the twelfth ward there were 499 teachers.

The result of this agitation was the passage of a law by the Legislature (Chapter 532, Laws of 1893) providing that the Mayor should appoint a commission to report to the Legislature a comprehensive revision of the laws affecting common schools and public education in the City. This commission reported in 1894 and recommended abolishing the inspectors and depriving the trustees of all powers except those of visiting schools and reporting on their condition. Some of the trustees' powers were given to the Board of Education and others were conferred on a Board of Superintendents, to consist of the City Superintendent and twenty Division Superintendents. This Board was given large powers. Provision was also made for a Superintendent of School Buildings and Supplies. The proposed law failed of passage at the 1894 session. It was reintroduced in 1895 with some amendments, but failed again.

Chapter 387 of the Laws of 1896 abolished the trustees and gave the Mayor power to appoint five inspectors in each district whose duty was to visit schools. The statute also created a Board of Superintendents, consisting of the City Superintendent and as many Assistant Superintendents as the Board of Education might deem necessary. The professional control of the schools was lodged almost entirely in the new Board of Superintendents, only a veto power being given to the Board of Education, whose composition remained unchanged.

Brooklyn

In Brooklyn there was no "Public School Society." The schools that were established and maintained there, after the recognition by the State that education was a matter of public concern, were administered by local authorities subject to the general State laws.

As mentioned above, the State established the common school fund in 1805. The first distribution was made in 1815, and in 1816 a local tax of \$2,000 was levied and a common school opened in the village of Brooklyn. Several other schools were established prior to the incorporation of the City of Brooklyn in 1834 and the creation of a Board of Education in 1843. But prior to 1843 all the schools were organized as special district schools. It is true that in 1835 a law was passed (Chapter 129) authorizing the Common Council to appoint three trustees of common schools in each district, and for the whole City three inspectors and three commissioners, but the district organization was still paramount.

The statute of 1843, creating a Board of Education, provided that the members of the Common Council should be Commissioners of Common Schools in and for the City, and that on the first Monday in April, 1843, they should appoint two or more persons to represent each of the school districts as members of the Board of Education. The full term of office was fixed at three years and the Mayor and Deputy County Superintendent of Common Schools were made members ex-officio. The new Board was organized with only twenty-eight appointed members, as in two districts the full number of appointments was not made. The Board was authorized in 1848 to appoint a City Superintendent of Common Schools, the office of County Superintendent having been abolished by statute in 1847.

By Chapter 143 of the Laws of 1850 the Board of Education was made to consist of thirty-three members appointed by the Common Council. The law provided that at least one member should reside in each district. The term of office continued to be three years. The law of 1854 annexing the City of Williamsburg and the town of Bushwick to Brooklyn required the Common Council to appoint additional members of the Board of Education for the new part of the City, and that body fixed the membership at forty-five, of whom thirteen were to be residents of the new territory. This number remained unchanged throughout the rest of the Board's existence. In 1862 the Mayor was given authority to nominate members of the Board of Education, subject to confirmation by the Common Council.

In 1873 the charter was amended by providing that there should be a Department of Public Instruction in Brooklyn under the control of the Board of Education; that the City Superintendent of

Schools should be called the Superintendent of Public Instruction; that his term should be increased from one to three years and that the Board of Education might appoint two Associate Superintendents for three-year terms.

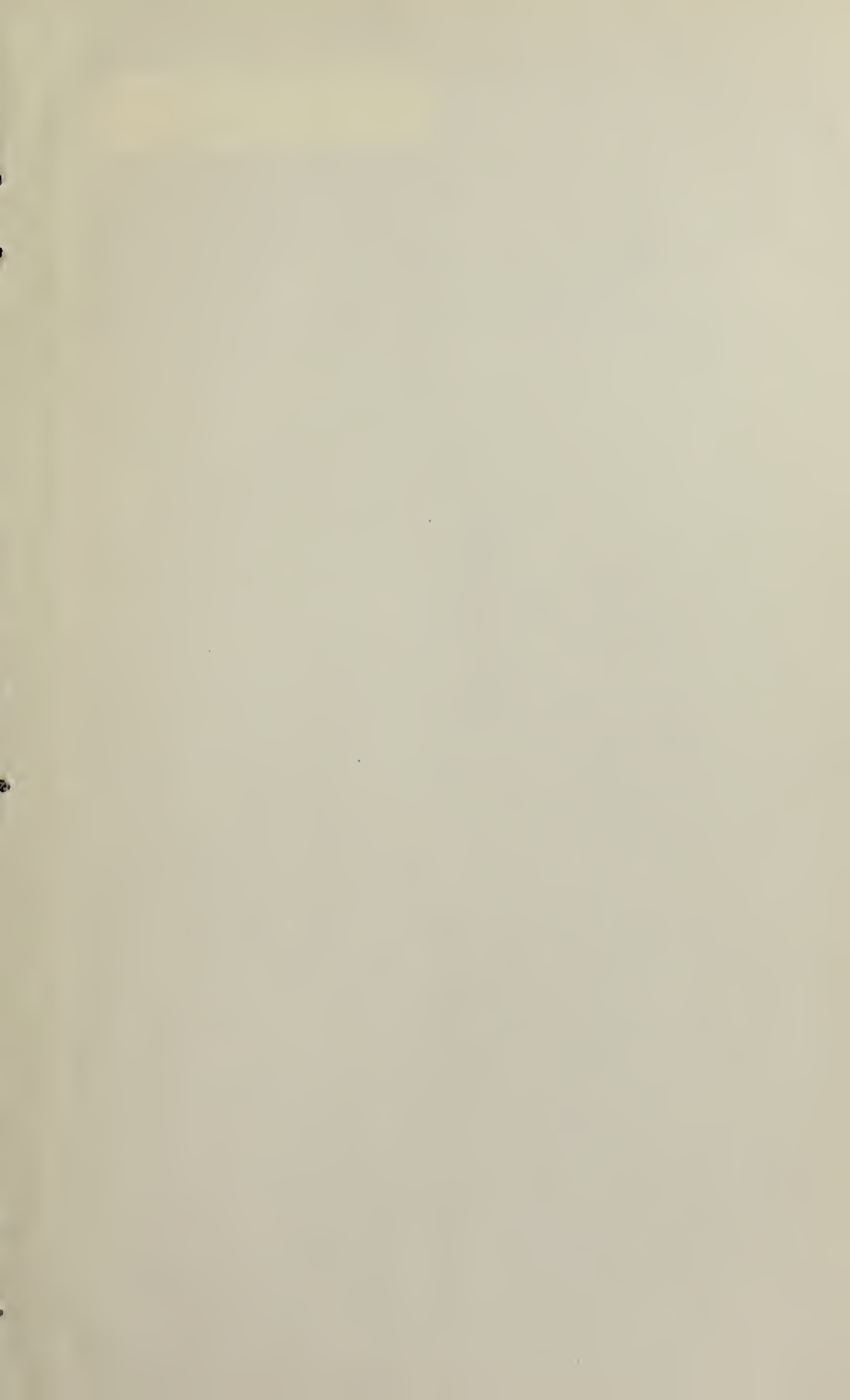
The amended charter which was passed May 25, 1880, provided that any vacancy in the Board of Education occurring during the remainder of 1880 should be filled by the Mayor and Comptroller (an act passed June 16, 1880, provided that in case the Mayor and Comptroller failed to agree, the Auditor of the City should become one of the appointing powers), and any vacancy during 1881 should be filled by the Mayor alone. After January 1, 1882, the sole power of appointment was with the Mayor. Some confusion resulted in 1886 from the fact that the amended charter fixed two-year terms for the heads of all city departments without specifically mentioning the Board of Education whose members had been serving three-year terms. In 1882 Mayor Low acted on the assumption that the Legislature had not intended to change the term of office of Board members and made regular three-year appointments. His successor, in 1886, took the other view, declared vacancies and made appointments on the two-year theory and doubt was cast on the legality of some of the Board's acts. In 1887 the Legislature settled the matter by specifically extending the terms of the 1885 and 1886 appointees and establishing the three-year term.

One unique feature of the Brooklyn public school system cannot be left untouched upon. The by-laws of the Board of Education of 1843 provided for district committees consisting of the Board members for each district. The schools of the district were especially committed to these committees. This scheme lasted but a short time, being followed by the local school committee, provided for by an amendment to the by-laws made soon after the reorganization necessitated by the statute of 1850. These local school committees consisted of three members for each school. In the course of time these committees acquired large powers in the appointment and promotion of teachers, in the making of repairs, etc., until they were practically supreme in their respective schools. This system was continued until the abolition of the Brooklyn school board in 1902 and was even then carried over as Section 1103 of the first Greater New York charter. The abuses of the local committee system, particularly with respect to the appointment and promotion of teachers, were repeatedly the subject of criticism.

Queens and Richmond.

The Borough of Queens is composed of several formerly independent communities, such as Newtown, Flushing and Jamaica. The early history of education is the history of these separate towns. The towns became school districts under the general State law, the subdivision in Newtown taking place in 1814, and schools were established from time to time. In 1870 a portion of Newtown was incorporated as Long Island City and the schools were placed under the city government in charge of a Board of Education of five members appointed by the Mayor. The village of Flushing was incorporated in 1837. In 1848 it was provided with a Board of Education of five members elected by the people.

In neither Queens nor Richmond, however, was there any central organization in charge of the public schools. There were numerous school districts and district officers, but not until the incorporation of these two boroughs into the Greater City was there anything that resembled centralized local school authority.





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